

HOWARD D. MCKIBBEN

Interviewee: Howard D. McKibben

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Description

Born April 1, 1940, in Virginia, Illinois, Howard McKibben lived at The Baby Fold orphanage in Normal, Illinois, until 1942, when he and his sister, Marian, were adopted by James and Bernice McKibben. Judge McKibben's father was superintendent of schools, and his mother was an English and Latin teacher. Throughout his oral history, Judge McKibben expresses his gratitude to his adoptive parents for the love and values that inform his life and career, and adoption remains an important advocacy issue for him.

Judge McKibben describes an idyllic Midwestern childhood, and repeats the themes of the importance of doing your best and enjoying what you do. In school, athletics were important, and he acquired an early appreciation for poetry and literature. A track scholarship sent him to Bradley University (BS 1962), then to the University of Pittsburgh for a master's of public administration (MPA 1964). Law school at the University of Michigan (JD 1967) followed.

Coming to Nevada with his new wife, Mary Ann, he practiced law, but public service was always in his mind. Judge McKibben transitioned from private practice to serving as a deputy district attorney for Douglas County. In 1971, he was elected district attorney and served until 1977. When he was asked to run for election to the state court, he was elected and served from 1977 to 1984. Judge McKibben's experiences as a district attorney and a state court judge honed his philosophy and opinions about jury and trial procedure.

In 1984, President Ronald Reagan appointed Judge McKibben to the U. S. District Court for the District of Nevada. His years as a state court judge were good preparation for the federal trial bench—he knew his values and principles, and he knew how to run a courtroom. Whether on the bench, overseeing the administration of his court, or committee responsibilities, family is important in Judge McKibben's life. He proudly acknowledges his wife, Mary Ann, and their children, Mark and Susan, for their help and support in his success.

The oral history interviews with the Hon. Howard D. McKibben were part of the Nevada Legal Oral History Project, a joint effort of the Nevada Judicial Historical Society, the Ninth Judicial Circuit Historical Society, and the University of Nevada Oral History Program.

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An Oral History Conducted by Brad Williams
Edited by Patricia A. Cooper-Smith

University of Nevada Oral History Program

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PREFACE

Established in 1964, the University of Nevada Oral History Program (UNOHP) explores the remembered past through rigorous oral history interviewing, creating a record for present and future researchers. The program's collection of primary source oral histories is an important body of information about significant events, people, places, and activities in twentieth and twenty-first century Nevada and the West.

The UNOHP wishes to make the information in its oral histories accessible to a broad range of patrons. To achieve this goal, its transcripts must speak with an intelligible voice. However, no type font contains symbols for physical gestures and vocal modulations which are integral parts of verbal communication. When human speech is represented in print, stripped of these signals, the result can be a morass of seemingly tangled syntax and incomplete sentences—totally verbatim transcripts sometimes verge on incoherence. Therefore, this transcript has been lightly edited.

While taking great pains not to alter meaning in any way, the editor may have removed false starts, redundancies, and the “uhs,” “ahs,” and other noises with which speech is often liberally sprinkled; compressed some passages which, in unaltered form, misrepresent the chronicler's meaning; and relocated some material to place information in its intended context. Laughter is represented with [laughter] at the end of a sentence in which it occurs, and ellipses are used to indicate that a statement has been interrupted or is incomplete...or that there is a pause for dramatic effect.

As with all of our oral histories, while we can vouch for the authenticity of the interviews in the UNOHP collection, we advise readers to keep in mind that these are remembered pasts, and we do not claim that the recollections are entirely free of error. We can state, however, that the transcripts accurately reflect the oral history recordings on which they were based. Accordingly, each transcript should be approached with the

same prudence that the intelligent reader exercises when consulting government records, newspaper accounts, diaries, and other sources of historical information. All statements made here constitute the remembrance or opinions of the individuals who were interviewed, and not the opinions of the UNOHP.

For more information on the UNOHP or any of its publications, please contact the University of Nevada Oral History Program at Mail Stop 0324, University of Nevada, Reno, NV, 89557-0324 or by calling 775/784-6932.

INTRODUCTION

Born April 1, 1940, in Virginia, Illinois, Howard McKibben lived at The Baby Fold orphanage in Normal, Illinois, until 1942, when he and his sister, Marian, were adopted by James and Bernice McKibben. Judge McKibben's father was superintendent of schools, and his mother was an English and Latin teacher. Throughout his oral history, Judge McKibben expresses his gratitude to his adoptive parents for the love and values that inform his life and career, and adoption remains an important advocacy issue for him.

From picking berries and fruit, mowing lawns, baling hay, detasseling corn, and measuring for farm subsidies to saving money for school and the occasional movie and root beer at the drugstore, Judge McKibben describes an idyllic Midwestern childhood. He talks about the importance of doing your best and enjoying what you do. In school, athletics were important, and he acquired an early appreciation for poetry and literature. A track scholarship sent him to Bradley University (BS 1962), then to the University of Pittsburgh for a master's

of public administration (MPA 1964). Law school at the University of Michigan (JD 1967) followed.

While in law school, he met Mary Ann Scott. It was love at first sight. In his own words, Judge McKibben says, "I didn't want the music to stop. . . . We were very much in love and it was a nice journey." The newlyweds—a new lawyer and a new librarian—came west, settling in Minden, Nevada. Public service was always in his mind, and it wasn't long until McKibben transitioned from private practice to serving as a deputy district attorney for Douglas County. In 1971, he was elected district attorney and served until 1977. When he was asked to run for election to the state court, he was elected without opposition to the Ninth Judicial District Court for the State of Nevada, serving from 1977 to 1984. Judge McKibben's experiences as a district attorney and a state court judge honed his philosophy and opinions about jury and trial procedure. Jurors rank high on his list—they are "the best goodwill ambassadors we have in the community."

In 1984, President Ronald Reagan appointed Judge McKibben to the U. S. District Court for the District of Nevada. At the suggestion of then-Senator Paul Laxalt to express his interest in the position, on a trip and without a typewriter available, Judge McKibben handwrote a letter. The traditional and personal touch did not go unnoticed. His years as a state court judge were good preparation for the federal trial bench—he knew his values and principles, and he knew how to run a courtroom. A favorite childhood book, *The Little Engine That Could*, guides his work ethic that “you can always be successful if you work hard. . . . As long as you think you can do something and . . . put your mind to it, you probably can.” As a judge, he tries to follow what a mentor, Judge Roger Foley, said: that a good judge has a “kind and gentle heart.”

Whether on the bench, overseeing the administration of his court, or committee responsibilities, family is important in Judge McKibben’s life. He proudly acknowledges his wife, Mary Ann, and their children, Mark and Susan, for their help and support in his success.

For readers who are interested in examining the unaltered records, copies of the recorded interviews are available at the Special Collections department of the UNR Library.

Brad Williams conducted oral history interviews with the Hon. Howard D. McKibben from September 2005 to December 2006, with an additional interview in March 2008, at Judge McKibben’s chambers in Reno, Nevada. The interviews were conducted as part of the Nevada Legal Oral History Project, a joint effort of the Ninth Judicial Circuit Historical Society (NJCHS), the Nevada Judicial Historical Society (NJHS), and the UNOHP. Begun in 2001, the project was intended to

record the life stories of leading members of Nevada’s legal profession and to educate the public about law and the courts by making those stories widely available through various media.

Members of the boards of NJHS and NJCHS compiled and vetted lists of potential narrators, ultimately selecting representatives from both the state and federal benches and bars. The UNOHP, under the direction of Tom King and his successor Mary Larson, recommended interviewers, most of whom were professional oral historians, and donated equipment and transcription services. Brad Williams, of NJCHS, coordinated the project from its inception. Susan Southwick, of NJHS, oversaw that group’s participation. Patricia Cooper-Smith completed the copyediting and introductions. Alicia Barber, Director of the UNOHP since 2009, supervised the project’s final publication and dissemination. The project was made possible by a generous challenge grant from the John Ben Snow Memorial Trust, with matching funds provided by the U.S. District Court for Nevada Attorney Admissions Fund, the Washoe County Courthouse Preservation Fund, and the Nevada State Bar. Thanks go to Susan Southwick and the Board of Trustees of NJHS, and Brad Williams, who interviewed Judge McKibben.

Patricia A. Cooper-Smith
Carson City, Nevada
June 2013



HON. HOWARD D. MCKIBBEN,
U. S. DISTRICT JUDGE, DISTRICT OF NEVADA, 2008

(Courtesy of Cooks Photography)

CHILDHOOD THROUGH COLLEGE YEARS

Brad Williams: This is the beginning of our oral history with United States District Judge Howard D. McKibben. Today is September 29, 2005. We're in Judge McKibben's chambers in Reno, Nevada. Good afternoon, Judge.

Howard McKibben: How are you, Brad? I'm delighted to have this opportunity to reflect on years that I've forgotten about, so it's nice to be here.

It's very nice for me to be here, and I'm glad to have this opportunity to talk to you about your life and about your career. I want to begin by asking you quite simply when you were born.

I was born on April 1, 1940 in Virginia, Illinois, which is a small rural community in south central Illinois. I was an April Fool's child.

What was Virginia, Illinois, like?

I lived there about two years of my life, so I really don't have any recollection. I have

since gone back to visit, and it's a very small town of less than a thousand people. It is surrounded by farmland.

In 1941, my sister and I were taken to live at The Baby Fold, which was an orphanage in Normal, Illinois. I was so young I really can't remember much about that period. The Baby Fold is still in Normal. This last year, I gave a talk at their Founder's Day banquet. It was really quite an emotional experience because the whole process of adoption has had a very significant impact on my life.

I was about two years old at the time that my sister and I were taken to the Baby Fold. My sister's name is Marian, and she and I were not separated. We had two other half-sisters, Peggy and Hazel, and we did not see them again for many, many years after that. I was at the Baby Fold along with my sister for approximately six or seven months in 1942.

In October of 1942, James Dewey McKibben and Bernice Brown McKibben, who were living in Clinton, Illinois, which was not far from Normal in central Illinois,

came to the Baby Fold. They wished to adopt a child. They were told that there were two children for adoption, a brother and a sister, and the Baby Fold didn't want to separate them.

No, this is very interesting.

James and Bernice McKibben were in their mid to late forties and they were concerned about adopting more than one child. As they have told us, they went home and thought about it. Fortunately for us they decided, "Well, we can raise two children," and they returned to the Baby Fold and told them they wished to adopt us. That was in October 1942. In November of 1942, we were placed in their home in Clinton, Illinois. The adoption was finalized in McLean County Court in 1943.

My father was a superintendent of the school district in Clinton, and my mother was an English and Latin teacher. She wasn't teaching at the time because she stayed home to take care of my sister and me. I would have been two at the time. We lived in Clinton until 1948, when I finished the second grade. We then moved to Oneida, Illinois, which is north of Peoria about fifty miles. It's in the northwestern part of Illinois. That's where I lived then until I graduated from high school in 1958.

This is an unusual childhood, and I imagine one that has a lot of emotional resonance, as you suggested when you went back to the Baby Fold to talk to them on their anniversary. Do you want to tell me the circumstances of you and your sister being put up for adoption?

All I really know is that our biological mother's name was Sara Shaw.

Let me ask you Judge, about your father, James McKibben. Tell me a little bit about him. What kind of a man was he?

My father James McKibben and my mother, Bernice, were obviously the two most influential people in my life until I met and married Mary Ann, my wife. He was born on a farm outside of Oneida, Illinois in 1897. He tells us that he was out in the yard and watched Halley's comet when it came through. That would have been around 1911. He recounts how he saw the very first automobile, a Model A, coming down a dirt road on his farm. His uncle had driven it from Chicago. It was a great experience because until that time, all they really had were horses and buggies and that's how they got around. So it was quite a thrill for him.

They lived on a farm outside of Oneida, and he and his brother and sisters helped farm, helped his mother and father farm. Then he taught at a small school called Fossmeier [phonetic] outside of Oneida. He did that in order to earn enough money so he could go to college. He taught the twelve grades in a one-room school. He saved his money and then he enrolled at the University of Chicago where he received his undergraduate degree.

Then after he graduated from Chicago, he taught in Varna, Illinois, for several years. That's where he met my mother, who also was a teacher there. She had gone to Knox College in Illinois for either one or two years. After that, she finished her education at DePauw University. Then she taught English and Latin in Varna. Dad was a science and physics teacher. They met in Varna and ultimately were married while he was still at Varna.

Dad then moved to Galesburg, Illinois, in Knox County. He ran for county superintendent of schools and was elected. He was elected on

the Democratic ticket. He liked to joke about that because years later he became a registered Republican. He thought that was quite a victory, and it really was in those days, and even today, because Knox County is one of the traditional Republican strongholds in Illinois. To go there and be elected as a Democrat was quite a feat. He served as Knox County superintendent of schools for four years. They then moved to Clinton and Dad became superintendent of schools in Clinton. And of course, that's where we pick up the story, when Mother and Dad adopted my sister and me and we became a family in Clinton.

Is Marian older than you?

Marian is a year and a half younger than I am.

Tell me a little bit about your mother, Bernice.

Mother was born in Varna, Illinois. Mother's maiden name was Bernice Brown. Her mother, my grandmother, Olive Held Brown, just epitomizes a grandmother. She had a beautiful and kind personality and she loved her grandchildren. She had a wonderful home. When I was growing up, I thought it was one of the largest homes I'd ever seen. In truth, it was not that large, but it was in my mind. Our families would gather there for Christmas every year. Grandmother grew up on a farm outside of Varna. We would go out there, and ride in sleighs pulled by horses. It was just a marvelous experience. Probably, of all the memories I have, those are some of the most acute and wonderful memories of fun times with cousins.

My grandfather owned the hardware store in Varna. We would have a fun time going to the store and climbing around the ladders.

How far was Varna from Oneida?

When I was very young, it seemed like a long distance. It was actually about sixty miles. But in those days, it would be a two-hour ride. We didn't get over there that often. We didn't travel a lot. I think we went to Chicago once and sometimes we would go to a lake in Wisconsin for a vacation. Then, in 1950, we took a long trip to San Francisco. That was about the only big trip that we had as I was growing up.

Oneida, is that corn-growing country?

It is. Knox County is probably the premier corn county in all of the Midwest. Some of the richest soil in the country, I think, is in Knox County.

When we moved to Oneida, there were four towns that had individual high schools. In 1948, as superintendent of the school district, my father helped form the consolidated school district of the four towns. It was called ROVA, R-O-V-A. The communities were Rio, Oneida, Victoria, and Altona. It was quite a task for him to be able to convince people to consolidate and to be able to administer this consolidated district and start it from scratch. From everything I could tell—of course, I was young, but in retrospect, too, talking with people, he did a marvelous job in consolidating the district.

I imagine that in those days, in 1948, 1949, that was a very progressive idea.

It was. It really was. And of course, he was an educator all his life. I know that he very much enjoyed what he was doing. When I went to high school, the district had completed the consolidation of a new high school. We

moved out of the smaller school and started as freshman in the new school. So we had four full years in the new high school. The other students used to laugh and say that I had some influence over my father in making sure that we got that high school built in time so I could have four years there. It wasn't the truth at all, but that's the way they perceived it.

Sure, sure. That's interesting. Tell me a little bit about some of these jobs you had in and around Oneida.

I started probably when I was about eight years old. I picked berries and fruits, apples and peaches and strawberries. I can remember that was the first job I had. After that, I worked bagging groceries at the grocery store across the tracks. Oneida was a community that was on Highway 34, which was a major highway through Illinois. The CB&Q also ran right through the middle of Oneida, and we were on the south side of the tracks.

You better tell me what the CB&Q is.

That would be the Chicago, Burlington, Quincy Railroad. It ran all the way from Chicago to San Francisco. It had a major switching yard, along with the Santa Fe, in Galesburg, which was about fifteen miles from Oneida. There were a number of people who worked for the railroad in our communities. But it was primarily an agricultural community.

After I had those early odd jobs, I mowed lawns. I think I mowed seven or eight lawns. I had a little hand mower. Then finally I got my big job, which was to work on farms, baling hay. By the time I got to be about, I would say, twelve or thirteen. We would milk cows early and then I would feed the hogs and we would go out and bale hay. I would load it

on the wagons and then stack the hay in the haymows. I did that for a number of years.

As I got older, I was able to drive the tractors. In those days, as long as you didn't go out on the highway, you could drive the tractors. One of the most embarrassing things that happened to me was when I was asked to go in early in the morning and pick up feed at the elevator, which was right along the CB&Q Railroad. I went in with the wagon, and when I came back, I looked in the wagon and saw the wagon was half full, and I couldn't figure out what happened. I'd forgotten to fully close the tailgate, so there was a trail of grain all the way from the grain bin down to the farm. If ever there was circumstantial evidence of neglect or negligence that was it.

My boss was not very happy with me, but I told him that I would pay him back for the grain that I lost. But fortune intervened the next day. He was backing up a tractor and I was holding the tongue of the wagon. It was a clutch tractor. As he came back, the clutch stuck and he yelled. I could see the tractor was coming back on me. I did a vertical leap that put me right up into the wagon. He came back and crushed the tongue of the wagon and crushed the front part of the wagon. I just escaped being injured. After that, he totally forgot about the incident with the grain and, as I say, I think fortune intervened for me that day. [laughter]

You were lucky in several ways.

I was.

Was there any seed corn grown around there? Did you ever serve on a tasseling crew?

I did. As a matter of fact, my sister and I both detasseled corn. I was on the walking crew and she was more fortunate. I thought

it was a form of discrimination, frankly. All of the young girls that detasseled got to ride on these big rigs and just sit there and pull the tassels from the top. The cornfields could get really hot and muggy, and I was fairly short. I was probably five-six at the time. I'd have to reach up and pull those tassels down, and they'd shake in your face. It was not a pleasant task, but we made good money detasseling corn, and that's why we liked the work.

I did that for probably two summers. I'd have to get up at four-thirty in the morning. I've always been an early morning person, I think, because of that. To this day, I still get up around five-thirty or so in the morning.

Those early habits tend to stick with you.

Oh, they do. The other job that I had in connection with farming that I was not crazy about was pulling velvet weeds out of the bean fields. Of course, we had the corn, the beans, the hay, and the oats. I'd have to go out in the bean fields and walk along the rows and cut out the weeds and the vines would tear your legs. My legs would be bloody by the end of the day. I'd go through a pair of jeans about every three or four weeks. That was not a pleasant task. We had machetes that we used to whack the corn out of the bean fields, and then we'd pull the velvet weeds with our gloves. That would be hard on our hands. You really appreciate, when you work those hours under those conditions, some of the finer things in life once in a while. [laughter]

When you don't have to get up at four-thirty in the morning. It's hard work.

It is.

Farming is hard work.

It really is. I developed such a great affection for people who farm. They rely on the weather. Regardless of those conditions, they go out and do the best that they can to plant and harvest the crops.

Another job I had during the summer was to work with the Agricultural Stabilization Conservation Service. I would plat out the areas that the farmers were required to take out of production in order to obtain farm subsidies. Then I'd go out to the farm with the tape measures and work with the farmers to designate the areas that would be taken out of the rotation for crop allotments. I enjoyed meeting and talking with the farmers.

In those days, one of the major topics of discussion was Everett Dirksen. He was a Senator from Illinois. They called him "Mellifluous Ev," and it was just great to listen to the farmers tell us all the tales about Dirksen. He grew up in Pekin, Illinois, which was close to Galesburg. He was revered in that area. Sometimes I had trouble getting my job done on time because we'd get engaged in all those wonderful stories.

The other thing that surprised me at the time involved the types of subsidies farmers received. They would be paid to take some of their land out of production. I was involved with that program. Another friend of mine was involved in a program that provided subsidies for fertilizer so the farmers could increase their yield. The crops that they'd produce would be about the same, but there'd be a double subsidy there. It was probably was a good thing, because farmers were becoming a dying breed.

The small family unit, I think, was very healthy. And I still believe today that I had a most wonderful foundation growing up in a small community where you knew everyone, where you had a work ethic like I've described, where you get up early in the morning like

that. You get together at the socials in the small churches in our communities. The women would bring wonderful pies and desserts and all of the foods and the hams, the fresh tomatoes, corn on the cob, and fried chicken. You really savor those times.

When I was baling hay we would work from sunup to sundown. At noontime, you'd go to one of the homes and all of the spouses would be there with this lavish lunch. The food was just extraordinary: fresh tomatoes, fresh corn, everything you could ask for, and wonderful chicken. We just never wanted to go back to work in the afternoons, but we had to.

One of the other vivid memories I had growing up was sitting in the haymow when it was raining. We'd have to come in out of the hayfields, and we'd go into the barns, and many of the barns had tin roofs, and you would just lie there in the haymow and listen to the rain pounding down on that tin roof. Anytime I get stressed, I think of those peaceful moments; of that rain coming down on the tin roof. It's a very peaceful and a tranquil thought.

It sounds very bucolic.

Yes, it does. [laughs]

Whose idea was it for you to have these different jobs?

I don't recall that anybody really asked me to do anything like that. I just recall that I thought it was important to be able to make enough money so that I could save for school, number one, and, two, have enough spending money so I could enjoy things a little bit. We had a little movie theater in that town, and right next to it was a drugstore. They had the most wonderful root beer there at the

drugstore. It was in the old mugs that were chilled. The druggist would get them out and they had frost on them. It cost a nickel for a mug of root beer. I wanted to save up my money so I could go there and buy root beers and go to the movies. They had movies of Abbott and Costello. Those were really fun things to do in those days.

And it sounds like your friends were doing the same sort of things.

They were. All of our friends were. A good number of my friends, closest friends, lived on farms. Even though we lived in town, I just really enjoyed the farms.

Did your mother ever go back to teaching?

She did. She did not go back to teaching until my sister and I were in school. In Oneida, we went to grade school from the third grade through the sixth grade.

And she must have taught at the high school.

She did. As a matter of fact, when I was a freshman, she was teaching Latin. I ended up taking Spanish instead of Latin. But looking back on it, I wish I'd taken Latin because she would have been a wonderful teacher. I'm sure that even though she'd have been very demanding, it would have been a great experience. But she was able to teach me some at home, so I benefitted from that.

When you were in elementary school up to the sixth grade or so, are there any teachers from that time that stand out in your mind?

My fifth-grade teacher was very relaxed and we got to do just about anything we

wanted to. I thought she was just the most wonderful teacher because she would just basically let us do whatever we wanted to do in class. When I started the sixth grade, it was a rude awakening. Our teacher was quite demanding. And looking back on it, I learned a lot more in the sixth grade than I did the fifth grade.

We had a wonderful high school teacher by the name of Miss Parkinson. She taught English and literature. I was just very taken by her approach to teaching. Among other things she taught us, was the “Preposition Song.”

Do you remember that?

I think I could actually recite it. We were told it has many of the prepositions in the English language in it and it goes as follows, if I recall:

With, on, for, after, at, by, in
 Against, instead, of, near, between
 By, off, from, under, down, below
 Through, over, up, according, to
 Beside, abroad, beneath, upon, are
 prepositions, every one.
 Beside, abroad, beneath, upon, are
 prepositions, every one.
 Aboard, across, beyond, about
 Before, behind, within, without
 Around, among, amidst, above
 Toward, notwithstanding, into, of
 Bedside, abroad, beneath, upon are
 prepositions, every one.

That’s wonderful. That’s absolutely wonderful. I never heard that.

I graduated in 1958. I went back for my forty-fifth reunion, and Miss Parkinson, who now is Mrs. McNeil was there. And I asked

everybody to recite the “Preposition Song.” She was just thrilled that many of us still remembered it.

She introduced us to literature. She made literature and poetry really come alive for us. I enjoyed poetry, particularly Robert Frost. I liked Frost’s “The Road Not Taken.” We used to discuss it in class. She really was a very significant influence on my life. She and my mother instilled in me the beauty of literature and poetry. At that time, my life was centered around athletics. She gave me another part of a discipline that I found really enjoyable and something that has stayed with me forever. So I have to say she was a very influential force in my life during that period of time.

Being from Illinois, did you read Sandburg or Edgar Lee Masters?

I did. As a matter of fact, Carl Sandburg lived in Galesburg. I’ve been to his home. He was revered in that area. He came from very humble beginnings. I’m trying to remember. Edgar Lee Masters, I think, wrote “The Spoon River Anthology,” and, of course, the Spoon River was within about forty miles of my home. My dad and I even fished along the Spoon River during those early years.

In addition to the poetry, were there novels that you were introduced to that you were intrigued by?

Chaucer was one thing that we spent some time with and I had a little trouble with the old English.

Everybody does. Did you read any Twain at that time?

Oh yes. Oh yes. We read . . .

Because that's Twain country.

I think probably when we were in junior high, we were reading *Tom Sawyer* and *Huckleberry Finn*. We went to Hannibal for a visit and saw the whitewashed fence. And of course, I spent some time on the Mississippi River during the period while I was in high school. We'd go over to the Mississippi River and water-ski. If we fell off the skis, we tried not to drink the water.

There were strip mines in our area. The cranes had immense buckets. I remember when my dad first took my sister and me out to see the strip mines where they had been digging for coal. You could put three or four cars in the buckets of the large cranes. I was just amazed to see a bucket that large on a piece of equipment. For reclamation, after they finished strip mining, the crater they had dug would fill with water and those were our swimming holes. Very dangerous because they were very deep, but we enjoyed the swimming.

The other thing we did, was pick berries. We called them dewberries. They were much larger than a blackberry and they were prevalent in the slough areas. My dad and I would take our buckets and fill them with those berries. They were the sweetest form of blackberry I've ever had in my life. They were so abundant. You could just shake the berries into the pails. We'd bring them home and Mother would make pie with them, or cobbler. And then she would use the rest of them to make jam.

We had a cellar downstairs. Almost everybody had cellars to keep their canned goods and also to seek shelter from storms and tornadoes. Now, I never did go through a tornado, but my father did. He described it for us. He was a teenager on the farm, and a black funnel cloud approached their home.

He went down into the cellar with his family. When they came back up he saw the lamp pole in their yard had been snapped off. But, the portion of it that was still there had two pieces of straw in it and the straw had gone all the way through the post with the force of the tornado. You can duplicate it with a potato. Take a straw and push it through without breaking the straw. But to take a straw, and how fragile that is, and have it go through a post with that velocity and still be intact was amazing. And he described that for us.

Yes, that is amazing. That is amazing. You mentioned that you were very athletic and you were oriented towards athletics in school and high school. Did you participate in team sports or

Our competitive sports were football, basketball, baseball, and track. I lettered in all of those sports. There were a total of sixteen letters you could receive in high school, and I think I received fifteen. I was on the varsity football, basketball, and track team my freshman year. We didn't have a baseball team until my sophomore year. I enjoyed sports a great deal.

We almost won the Little Six Conference in football my junior year. We did win the conference in track. My senior year, there were scouts from the University of Illinois in the stands watching our football game against Knoxville. I was doing rather well as a halfback and our quarterback, Steve Cox, was also doing well. I remember I scored a touchdown on the first play. On our next possession, I tried to avoid a tackle and tore ligaments and cartilage in my knee, and that ended my football career.

But I did go on with track, and was fortunate to have been competitive. For many years my time of ten seconds in the hundred-

yard dash, twenty-three seconds in the 220-yard dash, and twenty-two feet in the broad jump were records in the conference. I ended up going to Bradley on a track and academic scholarship and I ran track at Bradley for four years.

Athletics were a very important part of my life and I think competitive sports helped develop my character a lot. Coach Bill Adams, our football coach, was another very influential person in my life. I remember I broke my toe in one of the football games. I really wanted to go back into the game. I pleaded with him to let me have a painkiller but he wouldn't do it. It disappointed me at the time. But, as I look back on it, it was really a marvelous thing that he did, not to jeopardize my health for the sake of a football game. And I don't know if every coach would do that today. I would hope they would. He was thinking about my welfare, although at the time, I didn't see it that way. But he certainly was. He became the athletic director and they named the football field after him. I just think he was a marvelous role model for all of the students that were involved in athletics at the school.

What was it about him that was influential to you?

Winning wasn't everything to him. He wanted us to do the very best that we could. As long as he felt that we were doing the best we could, he was very complimentary of what we did. If he thought that we were not performing to our ability, he had a way of prodding us on to do better. But I don't remember him ever having harsh words for us. He was very skillful at being able to get the very best out of us without demanding that we excel. I really saw that as his great strength. He had a gentle approach to the game, and yet you knew that

he desired to win as much as anybody. But if he knew that you were doing the best that you could, regardless of whether you won or lost, he was very supportive of what you did.

My grandmother Brown used to have a plaque in one of her rooms that said, "When the Great Maker finally comes, it matters not whether you won or lost, but how you played the game." And I think he epitomized that. I've always felt that was important. With our children, Mary Ann and I tried to stress that over the years. If you aren't having fun at what you're doing, then you shouldn't be doing it, whether it's sports or judging or being part of a legal community. Whatever you are doing in life you need to enjoy it and do it as well as you can. He instilled that in all of us and I think that was a very good character builder.

Between elementary school and ROVA High School, was there an intermediate school?

There was, and it was in Altona, Illinois. We didn't call it the middle school; we called it junior high. That was the seventh and eighth grades, so we were there for two years. We had to take the bus because it was about six miles from Oneida.

Was that a transition for you between sixth and seventh grade, going from elementary to the junior high?

It was, because you rotated classes. I'll never forget that when I got to junior high, there was a study hall area and I thought it would be nice to place my initials on one of the tables there. The principal, Mr. Pyle, saw me doing that. He gave me a bucket of water and some soap, and had me clean those tables and keep those tables nicely cleaned in the study area for several days. That taught me

a valuable lesson that when you come into a new place like that, there are other ways to make your mark than by writing your initials on a table. [laughter]

I guess there's other ways to make your mark.

I discovered that. [laughs] I enjoyed basketball a great deal too. One of the special moments that I had playing basketball was when we played Galesburg. They were in a different league than ours. They were a much larger school. Two of their players, the Kimbro twins were outstanding football and basketball players. They went on to achieve some fame as college football players. And I'll never forget, I got fouled a number of times during that game. I think I ended up making twenty-three free throws in a row, which was a record at the time. Now I would be happy to make two free throws in a row.

Yes, that's interesting. Let me ask you a little bit about your friends.

Most of my friends lived on farms. Steve Cox, probably, who was the quarterback of our football team, and I were probably the closest of friends. His father had passed away and so he was pretty much responsible for running the farm along with his mother and his sister. So I became quite close to Steve. He ended up going to Knox College and then ultimately I think he went to Colorado State and was involved in, I think, nuclear physics. He was just a wonderful person.

Jim Nelson was another schoolmate of mine that I liked a great deal. He lived in the Altona area. I've stayed in touch with him since and saw him back at the reunion.

Steve Cox's wife Phyllis was the daughter of the principal at our school. She was a very

good friend. And, of course, we knew her family well.

Dale Fhanstrom was another classmate. He was very artistically inclined and has since gone on to teach design and he has his own studio and business.

As a matter of fact, it was Dale Fhanstrom who introduced me to a job between my junior and senior year, when I started working for a contractor. I had most of the jobs that involved brickwork. Dale did a lot of the design work on the homes. He was very, very talented. Dale and I became good friends and I worked with him for, I think, three summers with contractor Willard King. Willard built custom homes and was considered to be one of the finest builders in the area. I learned a great deal about construction through him.

Working construction must have been pretty good money.

It was. That was when I moved from the dollar to two dollars an hour up to the four and five dollar range, which was just wonderful for me. I had never earned money like that and it started doubling the income that I had, and I really appreciated it and started saving money for college.

You and Steve Cox and your other friends, I suppose, did things like water-skiing. You mentioned that earlier.

We did.

You liked to go to the movies.

We'd go golfing.

Golfing. Where did you go?

We went to a place called Bunker Links in Galesburg. It was an eighteen-hole course, a really nice course. It's still there. Lots of times we'd try to get up there early in the morning on Sundays. We'd get there probably at five-thirty or six o'clock, when the dew was still on the ground. The morning is a wonderful time to golf and we enjoyed those times together.

Did anybody teach you how to play golf?

No, we were self-taught and actually played a pretty good round of golf. We got to the point where we could shoot in the high seventies or low eighties, and so it was fun. But I never did have a lesson. I continued to play golf for a number of years until we had our children, and then we started playing tennis, and our children became good tennis players. It took less time to play tennis and we could have more time together as a family.

It really sounds idyllic growing up in this part

Well, and what made it so wonderful for me were my mother and father, and I think part of it may have been because they were a little bit older. They were in their forties, late forties, when they adopted us. They gave us so much guidance and so much love and affection. I consider myself to have been the luckiest person in the world to have had two people who were as loving and affectionate and giving as were our parents. I've always had a very special place in my heart for people such as Mother and Father, who wanted to take somebody into their home and give them a special home. We'll probably talk later about my feelings about adoption and how I've been involved in adoption matters during the time I was a state judge.

But it's always been a very special part of my life. The guidance that our parents gave to my sister and me, and their unconditional love changed our lives. They gave us a wonderful environment to grow up in. When people wonder whether heredity or environment is more important in a person's growth and development, I'm certain both of them are major contributors to your life and any small successes you have in life. But, I have to say, in my case, that the major contributor was the family and home that they provided for us. I will always cherish their memories.

How important was religion to your upbringing?

We were in a community where we had Lutherans and Presbyterians and Methodists. There were many Lutherans in Knox County. Many came over from the Scandinavian countries. I was a Methodist and my mother and father were Methodists. My grandmother Brown was a Methodist. We went to church quite regularly.

Our churches would have social activities, and we just loved the bazaars that they held and all the good food. We also had organized sports teams through the church. We would go to other communities and play baseball against other church groups.

I would also go to Sunday school. We had a church that had a belfry, and we'd go up into the bell tower and help ring the bell. And that's where we had our Sunday school. We could look out on the town. And sometimes we'd actually ring the bell when we weren't supposed to, when we were having a good time.

I actually gave the sermon a couple times at church when I was in high school. They

asked every so often if somebody could give a sermon, and I volunteered a couple of times and delivered the sermon. It was a long time ago but I seem to recall I talked about living your life to the fullest and reflecting on how important your spiritual life is as you go through life's journey.

There was a fellow named Reverend Moon who came to our community and put up a tent. That was the first time I'd ever gone to a revival meeting. It made a lasting mark on me because it was so interesting and he was so full of fire and brimstone. It was just fascinating.

We also had little carnivals that would come to town. They'd set up their tents and Ferris wheels and merry-go-rounds. That was a lot of fun because you needed something like that for excitement in the small towns. They'd do that probably once a year in our area. And then on Saturday nights in the park that we had, they'd put a big sheet up and they would show movies out in the park.

Across from the park, we had a ball diamond. I'll never forget, when I was in high school—I think I was a sophomore—we went to Wrigley Field in Chicago and went to a baseball game. The Cubs were playing the Giants. Willie Mays hit a foul ball and I caught it, and he autographed it for me. I kept that for some time. Then one day, we ran out of baseballs, and so I volunteered to use that baseball in a game. They hadn't mowed the grass way out in the outfield, and I lost the ball.

To this day, I'm sure it's on somebody's mantle someplace, because somebody probably found it. I searched for days and never could find that ball. That taught me a very valuable lesson about things that you get that you consider to be valuable. Hold onto them and don't do something foolish. [laughs]

Right, right.

You know, it's really funny on this, because it just jogs my memory about things that I wouldn't sit and write down or think about. You ask one question and then—you're a master at this. [laughs]

I'm not so sure about that. I just ask the questions. It's your memories.

It's funny how they come back.

Just as an aside, I think we remember things by association.

We do, yes.

It's a major way we remember things, so one thing can trigger another.

Right. And I will say one other thing about my sister, Marian. They didn't have organized sports for girls in the high schools, and that was unfortunate because she would have been a great athlete. She had every bit as much athletic ability as I did, and I always felt sorry that they didn't have something that would have allowed her to have achieved her potential. One of the privileges we had with my dad being the superintendent was that we could go over and get into the gymnasium and shoot baskets. I guess maybe that's where I learned to shoot all those free throws. But when Marian went to Bradley to college, she took second in the National Women's Intercollegiate Billiards. So she found something that she could do that wasn't an organized sport.

That's very interesting. Did you date in high school?

I did. I dated several girls in high school and one in particular. But after I left for college we went our separate ways.

Were you active in student politics?

I was. I was president of the National Honor Society at ROVA High School and I was on the student council.

You, earlier, told me that you went to Bradley University on a track scholarship.

I did.

Let me ask you this. Can you say when it became clear to you that you wanted to go to college or was it always assumed?

I would say that it was probably always assumed that if my sister and I had the academic ability to go to college, that we would go to college. And I know my parents always were certain that they would do everything they could to see that we received an education, including going to college and whatever else we wanted to do. So there never was really any question in my mind that as long as I could do it academically, that I'd go to college somewhere.

The issue really was where I would go. I had given consideration to a number of schools, including the University of Illinois and Northwestern, and even Chicago, where my father had gone. I have to say the decision on going to college was probably driven, in large part, by the fact that I received a full scholarship at Bradley and it included track, where I knew that I'd be able to compete. It turned out to be a really good decision on my part. But, at the time, I just felt comfortable with it because it was fairly close to my

community, an hour-and-a-half drive, and I knew that it was a school of about four thousand, that I'd feel comfortable with. Those were some of the factors, I guess, that caused me to decide to go there.

I recall that late in my junior year and early in my senior year, I was trying to decide on colleges and I seriously considered Knox College, which was in Galesburg, a very fine private school that my mother had attended for a year or so. I also considered the University of Illinois and Bradley, which was located in Peoria.

There were some scouts from the University of Illinois that came to our first football game my senior year and they were looking to possibly recruit our quarterback and myself. Our quarterback got hit on about the fourth or fifth play and got a concussion. That was his third concussion, and that kind of eliminated his prospects of going to a major school and playing football. I tore ligaments in my right knee on about the fifth play after scoring a touchdown, and that ended my hopes of playing football in college.

I received an invitation from Jake Schoof who was the track coach at Bradley, and because of my efforts on the track team at ROVA and some of the records that were set during my junior and senior year, he offered me a scholarship at Bradley, which was a full ride, half academic and half athletic. And even though I tore the ligaments and tore another leg muscle later in the year, to his credit, he maintained that scholarship for me and was very kind about it. When I called him and told him the physical problems that I was having, he said, "Well, that scholarship's good for you." I'll always be eternally grateful to him for that, because that helped me a great deal financially to be able to go to college.

So that ultimately is, I think, one of the major reasons I selected Bradley. It was relatively close to our home and had a good journalism department, and that's what I was looking at, was speech and journalism at the time. That's why I decided to go to Bradley.

Did you ever recover sufficiently so that you could compete?

I did. Then I was on the track team for four years at Bradley and broad-jumped and ran the hundred and some of the relays. So I was able to compete in the Missouri Valley Conference during that period of time. In fact, at one point—I think it was my sophomore year—up at the University of Chicago there was an indoor track meet and Ira Murchison was in the meet. He had set the world record in the hundred meters several years before that. I think 10.1, at the time, was the world record. I still have the number that I wore during that competition and I have his autograph on that. He autographed it with his name and his time for the record.

Quite frankly, even though this is getting ahead a little bit, that's one reason I decided that I was probably going to go on to law school or into public administration. Up until that point, I thought maybe I had some hope to consider the Olympics. But after running and watching Ira Murchison in that track meet, and his time was so much faster than mine, I knew there wasn't much hope to be a world competitor on the track scene and decided I better do something else. That was a very important lesson for me, a humbling lesson, I'd say.

College has a way of doing that, it seems to me, because when you go to college and you're a good student or athlete, or both, in your high school, you get to college and you are there with other outstanding scholars and athletes.

It's a humbling experience, and you're very nervous those first few days just acclimating. You don't know a lot of the people there. Frankly, I knew very few. No one from my school went to Bradley, so it was a period of adjustment.

This must have been a big change for you.

It was. Like with everybody, when you go away from home for the first time and you've led a fairly sheltered life, it was a fairly substantial change. But I felt I adjusted quickly and I felt very comfortable there.

I was fortunate because I lived in a dormitory for the first six months and I became friends with the head of the dormitory system, a man named Dick Wagner, and he was a great mentor for me. He ultimately became president of the student body at Bradley and he was head of the Independent Party. There were two political parties at the school: the Greek Party representing the fraternities, and the Independents. I became a dormitory assistant that first six-month period and worked with Dick Wagner. He sparked my interest in student government and, ultimately, my junior year, I was elected president of the student body at Bradley.

Were you elected on the Greek ticket or the Independent ticket?

No one ran against me. I filed as a Greek, but I had so many friends with the Independents as a result of my contact with them during my freshman year, that it was one of the few times that an election was uncontested.

So you must have pledged early on.

I pledged the end of my first semester and then became a member of Theta Chi fraternity.

I lived in the Theta Chi house for six months, and after that, two of my fraternity brothers and I moved into separate housing. Actually, it was a room above a bakery on one of the main streets in Peoria. It was very fortunate for us because the bakery was closed on Mondays. We became good friends with the people that worked in the bakery on Sundays. When they were getting ready to close on Sunday, we'd go down to the bakery and we could get enough rolls and coffee cakes to last us for a whole week. It was a wonderful relationship and it didn't cost us much of anything at all.

That's great. That's great. It must have been tempting during the week, though, when those smells are coming up from below.

It really was, and we had a refrigerator in that apartment where we kept the baked goods. I learned what the UCC, Uniform Commercial Code, was all about early because we bought the refrigerator and they sold it to us "as is." And within a week after we got it, it broke down, and we realized when we took it back that "as is" meant that we couldn't do much about it. But we were partly responsible for it, I think, because we were trying to defrost it and it wasn't a self-defrosting refrigerator. My roommate used a blowtorch to try to defrost it, and that was not a very good idea. We had some good times.

"As is" became "as was."

Right.

Who were your roommates at this time?

Al Edens and Stan Korista. Al happens to live in Reno now. He relocated to Reno a number of years ago and we've remained good friends. And Stan Korista lives in Illinois. They

were both in the engineering department, and I was taking journalism and speech and psychology and political science courses.

So did you also work on the student newspaper as a journalism major?

I didn't. My sister was at Bradley and she was involved in the student newspaper and the literary club. I was involved with, principally, student government and the debate team, as well as track.

Was the debate team intercollegiate?

It was. In fact, one of the most memorable moments was when my partner and I debated, I believe it was at Northwestern, and we got into the finals against Harvard. It was a flip-flop tournament, and you didn't know what side of the issue you are going to have until just before the debate. My partner was a wonderful researcher and I relied heavily on her research, and she relied heavily on my gift of gab—or whatever gift I had of being able to express myself. We ended up losing the tournament to Harvard, but by only one point, so we were very, very happy about that and thought it was a very successful year. I learned a great deal from debate. I also was on Glee Club and we got a chance to travel around singing and representing the university, and we enjoyed that a great deal too.

Was that the first time you'd done much traveling outside of Illinois?

It really was. In those days, we didn't have the transportation, obviously, that we have now, and other than one trip my family and I took in 1952 to the San Francisco area, I think the farthest I'd gone was Chicago to a couple of baseball games. So the chance on the track

team or the Glee Club to travel around was a nice experience for me.

On the track team, I formed some friendships with a fellow named Sam Pendola, who was really a fine sprinter, and Paul Moore, who was a wonderful hurdler, and we always had good times when we traveled. Usually, the traveling was either by bus or by train. We were in the Missouri Valley Conference.

We had wonderful basketball teams at Bradley during that period. They were nationally ranked. While I was there, we had Chet Walker, who ultimately played with the Philadelphia 76ers, and Bobby Joe Mason, who played for the Harlem Globetrotters, and Mack Herndon, and several others.

Chuck Osborne was the coach. As members of the track team, we were ushers at all the basketball games. I watched Oscar Robertson when he was playing for Cincinnati and Elgin Baylor who was playing for Seattle. We saw many great players play basketball there.

We had wonderful seats because we could sit right up in the rafters and look right down on the floor, and it was free. I ended up tutoring Bobby Joe Mason in English to try to help out. That was one thing I did to help some of the other student athletes at the university.

That's pretty interesting. Speaking of tutoring and teaching, are there any teachers from this time at the university that stand out in your mind?

We had a political science professor who really stimulated our interest in philosophy. I took several courses in philosophy and he made us think a great deal outside the envelope. I found that he was a very, very interesting professor. Another interesting teacher in psychology was a Professor Smith.

He was absolutely brilliant. His classes were large because everybody enjoyed taking his courses. But it was fascinating listening to him. Probably the third person was a Nicholas Nirodi [phonetic], and I'll get the spelling for you out of our yearbook here. He was a former, I think, Minister of Finance in Hungary. He taught one of our economics classes. He was an outstanding instructor. I'd say the three of them had some influence on my thought process and stimulated my interest in political science and the field of law.

Tell me a little bit about that, about how you came to decide that maybe journalism wasn't the way for you to go.

It was a slow process. As I got involved in student government at Bradley, I found I really enjoyed that a lot. I enjoyed working with other people. We developed, during the time I was involved as vice president and then president of the student body, a lecture arts program. At Bradley, students were required to attend lecture arts programs and most students didn't want to go because they weren't very interesting. When I became vice president of the student body, I decided that we'd change the lecture arts programs. We started charging the students a little more money for the programs, but then we invited world-renowned figures to participate.

I'll never forget when we invited Wernher von Braun. We had dinner with him the evening that he lectured. It was just a wonderful experience to meet him. He was such a dynamic person and had done so much in the field of space exploration and the development of the Saturn rocket. It was one of the highlights of my college life. We also invited Marlin Perkins, of Mutual of Omaha's Wild Kingdom, who was the head of the St.

Louis Zoo. He spoke of his quest to find the abominable snowman. We had Victor Riesel, who had been blinded when acid was thrown in his face. He was an American newspaper journalist who specialized in news relating to labor unions. The FBI arrested eight men and said the attack was the work of garment district terrorists in New York who had tried to silence Mr. Riesel. And we had Sherman Adams. He was chief of staff for President Eisenhower and was involved in the vicuña coat incident.

So we were able to assemble a cast of really fine people to come to Bradley and lecture, and the students just flocked to these lectures. It was a wonderful experience for everyone. Being involved in student politics convinced me that I wanted to do something in the area of public administration, the public sector, and I thought, in terms of a career in politics or law.

That's interesting, especially getting the chance to meet these notable individuals, but then also your orientation towards public service.

Right. I don't know. I've always had an interest in public service, and I think part of it is that I felt I was very fortunate early in my life to get a second lease on life when I was adopted. I've always felt somehow that perhaps I could give back to society what society had given me by giving me the opportunity to have a rich and full life through the adoption process. And I'm absolutely convinced that because society supported institutions like The Baby Fold that gave me a new lease on life, I felt I got truly a new life because of what happened. No one really knows why they get involved in public service rather than staying in the private sector, but I think probably that was a major factor.

The second and most important factor, I know, was my parents. They were both educators and my dad had devoted his entire life to public service in the school systems and administration. My mother really was totally devoted to education. Even though I had thought some about going into teaching and perhaps coaching, I knew I wanted to be involved, as they were, in public service. They instilled that in me and it was a major factor in my decision.

So when you graduate in 1962, what degree do you have?

It was a bachelor's degree in political science.

GRADUATE AND LAW SCHOOLS

And then you get a job in Saginaw, Michigan.

First I went to the University of Pittsburgh Graduate School of Public and International Affairs to work on a master's degree. I was fortunate there. They gave me a full scholarship that covered all of my room and board and tuition. Dick Wagner, whom I have spoken about earlier, was there working on his doctor of philosophy in education. I decided to pursue a master's degree in public administration or public affairs. I think Donald Stone was head of GSPIA, which is the Graduate School of Public and International Affairs, at the time, and it was a relatively new school.

I couldn't afford, in those days, to go to ball games, so I would go up in the Cathedral of Learning, which was the highest building on the Pittsburg campus. I'd go up to one of the top floors and take my radio and binoculars, and I'd watch the baseball games and the football games when they were played at Forbes Field. And that was how I entertained myself on the weekends. [laughs]

I see. So could you get a pretty good view of Forbes Field?

I got a good view. The problem was you couldn't see home plate. As a matter of fact, I don't have it here, it's at home, but I have a picture of the students watching the World Series when the series was played in Pittsburgh. They were watching the game from the Cathedral of Learning, very close to where I used to sit and watch the games. That was on the front of, I think, one of the *Life* magazines.

Oh, how interesting. Now, were these the Clemente years in Pittsburgh or is this a little early for that?

Yes—the Clemente years.

But this is the Bill Mazeroski teams.

Right, exactly. Right. Yes, that would have been in 1963?

It was about 1963, 1964.

Mazeroski hit his famous home run to win the World Series for Pittsburgh in 1960. I spent a year in Pittsburgh. The requirement of the school was that you spend a year working out in the field. At that time, I still was very interested in going to law school, but I was also interested in working in city management. So I went to Saginaw, Michigan, for my internship, and I was assistant to the city manager. His name was Ed Potthoff. He was considered to be one of the outstanding city managers in the country, and it was a fine experience for me to get to work under him in Saginaw.

During the year that I spent in Saginaw, Michigan, we were working on what's called program performance budgeting, which was a relatively new concept. The existing budget was a line-item type of budget. We were developing a fairly unique program at the time in city management, which was to develop your budget around programs and performance levels. We would identify the important programs and then allocate monies to those programs. When it was taken to the city council, the council could think more in terms of programs, and not pencils and paper and the small items. They were thinking more globally then and trying to allocate monies among programs, that way you could quantify the performance based upon the number of people you had in these programs. That was a new development in municipal budgeting.

While I was at Saginaw, it was a very interesting year for me because I also worked on the newspaper. I worked on the sports desk at the newspaper covering basketball and football games. I would write some of the box scores on the night desk. Then I also was a disc jockey and would spin some

platters on weekends. I enjoyed the Elvis Presley songs.

The other thing I did for recreation during that period was golf. I probably played thirty-six holes every weekend and played during the week. I was single and I had quite a bit of time on my hands. I would probably play nine holes three times during the course of the week and I got down to be about a five or six handicap and really enjoyed it a lot. It was a wonderful opportunity to play a lot of courses in that area.

That's great.

That was an exciting year for me. [laughs]

It sounds like a busy year, too.

It was. I also got quite involved with the city attorney there, and that probably was the final catalyst to convince me to go to law school. I really enjoyed working with the city attorney. The assistant city attorney had lost his sight, and I just marveled at the way he could, nevertheless, handle the duties as assistant city attorney, even though he had that disadvantage. I developed a wonderful relationship with the people in the city attorney's office and enjoyed that a great deal.

I also spent some time with the personnel director because I was designated as the person responsible for selecting all of the men and women that would be lifeguards. It was enjoyable to interview all the applicants for those positions. [laughter] So it was a very fun year that I had.

Had Lefty Frizzell's song come out by this time on Saginaw, Michigan?

I don't remember that now, but I do know about that song, yes.

I think it's a little before this time. That's really interesting, and involved in lots of activities. Was this a paid internship?

It was. I didn't receive a lot, but I received enough to pay for my room and board. I stayed at the YMCA about six months and then I lived in a condominium for the other six months while I was there.

And it was during that period of time that John Kennedy was assassinated, and I'll never forget it. I had just come into the YMCA. I was out in the lobby area where they had a television, and everybody said, "You have to come over here. There's been a huge tragedy," and I went over and watched the television and we all stood there in shock. I'll never forget that.

That just consumed the whole nation for four or five days.

It did, yes. Then, as a result of my contact with the city attorney's office there in Saginaw, I decided to apply to the University of Michigan law school and I was admitted to the University of Michigan upon my graduation from Pittsburgh.

So you enter University of Michigan law school in the fall of 1964?

That would have been the fall of 1964, right.

How did law school compare to the master's program in public administration?

It was a sea change, really. It was a cultural change for me and certainly a change academically because of the Socratic method that is used in law school. I wasn't quite used to that type of thought process and so there

was an adjustment period. That first year, I lived in the Law Quad. As a matter of fact, that's a picture of it up there. [pointing to the wall] That picture was taken exactly where my room was located. I would look across the quad, and to the left is the library and straight across is where the dining commons was. I worked as a waiter there, helping to pay for my room and board. I spent my first year there in the Law Quad and I roomed with Bill Pelster and Jim Cooke. Bill Pelster just retired as a senior partner at Skadden, Arps in New York. Jim Cooke was in a small firm in Washington, D.C., and he's just getting ready to retire too. But we've maintained a close relationship over the years. And Joe Ballway was a third roommate of ours. He worked for a number of years as legal counsel with Shell Oil Company, and we have maintained a relationship over the years.

My first semester, I roomed with Frank Struther. I think he may have had one of the highest entrance exams in the history of the University of Michigan law school. He loved horse racing and he would read the racing forms more than his text books, and yet he'd go in and get scores as high or higher than anybody else in the law school because he had that type of mind where he could assimilate everything very quickly.

He had a horse named D'Iberville. Matter of fact, he had two or three racehorses. He told me all about D'Iberville, and he said, "D'Iberville's going to win the race at the Detroit Race Track as long as it gets out of the gate." I figured, well, the horse is definitely going to get out of the gate, so why don't we go to the race and I will bet on him.

We went to the racetrack. The starter said, "They're off." And then the starter announced, "One of the horses is not out of the gate." Of course, that was D'Iberville, and I lost my two dollars. Frank immediately shipped

D'Iberville down to Kentucky for further training.

That was my second experience on losing a bet, on a race.

My first experience, actually, on losing a bet was when we were traveling to Wichita, Kansas, for the track meet I was telling you about, the Missouri Valley Conference, and there was a little poker game going on, on the train, just a friendly one, with some of the players. I didn't have enough to cover the pot, so I put the only sport coat I had in the pot. The game was high/low/in-between. I had an ace and a deuce and I thought I couldn't lose. As luck would have it, the next card was an ace and I lost, and Sammy Pendola, who was one of our track teammates ended up with my sport coat. It took me a long time to get enough money to pay him back and get my sport coat back.

[laughter] Those were very valuable lessons. I don't gamble anymore.

Those are great stories. While you're at law school and you have these roommates, were they also study partners? Or how did you study? Did you study on your own?

We studied individually. We'd talk about cases from time to time, but it was more individual study.

I would go back for summers to Illinois and I think I worked one year with the Agricultural Stabilization Conservation Service, and another summer I may have continued work on construction of houses to make money for law school. So that's what I did during my summer vacations. I also, to supplement my income, did some substitute teaching, usually high school and psychology courses and what have you in Royal Oak and places close to Ann Arbor.

And of course, one of the wonderful things at Ann Arbor were the football games.

We just couldn't wait for the fall to come around so that we could go to the football games. When you're there with over 100,000 fans in what we called the Big House, it was quite an experience. I'll never forget. The first year I was there, Lou Alcindor aka Kareem-Abdul-Jabbar, was looking to go to college someplace, and he was being courted by the University of Michigan and UCLA and some others. We all remember when he came on campus, and he was quite a figure there. We were hoping he was going to end up at Michigan, but he decided to go to UCLA and the rest is history.

But Cazzie Russell played at Michigan while I was there. We had some good basketball teams, and we had good football teams, obviously, during that period too.

Ann Arbor, the whole town, shuts down for football.

Oh, it really does. I mean it really does.

Just amazing.

It's an event. [laughs] It really is.

Were there particular subjects that you enjoyed in law school or that you excelled at?

I enjoyed constitutional law, criminal procedure, criminal law. I would say those are the subjects that I enjoyed the most, and those were in line with my inclination to work in the area of public service, being a prosecutor someday, going into the public sector. Those were all pretty compatible with my thought process.

I'll never forget the first day in our criminal law class. We were all seated in there waiting for the professor to come in, and all of a sudden, somebody broke into the classroom

chasing somebody else and then there was a shot fired. There was blood all over the place. We were all just sitting there, stunned. Then a few minutes later, the professor came in and said, "Now I want you all to sit there and write and explain exactly what you saw happened here." We all tried to explain what we had seen. Our responses were all over the compass, from the assailant being a woman, being a man, Hispanic, African American, white. It was a very, very poignant lesson to us that eyewitness identification in stressful situations is not very reliable. I've never forgotten that. But that's how he started that class. It hadn't happened in any classes before because I think he was a relatively new professor and we had no idea this was going to happen. It was a startling event. I had suspicions that it had been staged, but I wasn't sure. It was very realistic and they did a good job. Apparently, they had hired some special actors and they'd equipped them with real blood that would explode somehow in a little packet that they had. It was very realistic. But I definitely remember that.

How dramatic. That's a great teaching device.

At first, I also remember sitting in those lecture halls hoping that they wouldn't call on me to debate and discuss some of the cases. There were a few in our class that liked to discuss things all the time, but the rest of us really were very comfortable letting others discuss the cases.

Was this the time in the first class the professor would say, "Look to your left, look to your right and . . .?"

I believe that they did say that, as a matter of fact. "One of you will not be here," or maybe, "Two of you will not be here." I forget.

But it was nerve-wracking. You hoped that things would work out all right for you.

Then after my first year, I returned, and it was the fall of my second year that I went to a mixer that was being held by the law school. It was just off the Law Quad. As it turned out, this was the most wonderful evening of my life. I noticed this young lady who was there, and I thought I'd ask her to dance. As I walked over to ask her to dance, someone else from our law school asked her, and I was hoping that wasn't the end of it. But as soon as that music finished, she immediately walked over to where I was, and I then asked her to dance. She was beautiful and kind and very engaging and I didn't want the music to stop.

I escorted her back to the house where she and some friends of hers were living. She offered me some coffee. She said, "Do you like coffee?"

I said, "Yes." Well, I didn't care for coffee at all. I think that was the only cup of coffee I've ever had in my life, but I was very interested in her and I had the impression she might be interested in me. We talked for hours that evening and I knew at that point she was the person I'd like to spend the rest of my life with. Her name was Mary Ann Scott.

She and I dated during that second year of law school and we were married the following July. In my case, it was love at first sight, which you hear about, but you don't think necessarily it's going to happen to you. But it did in my case, so I was very fortunate. She is the most wonderful person I have ever known and we were married July 2, 1966, in the Brown City Methodist Church in Michigan. Mary Ann is the love of my life and my best friend.

That's wonderful.

And then it was that . . .

Pardon me. What was her maiden name?

Mary Ann Scott. She was born in Ohio in a little town around Lima, Ohio, and then her family moved to Brown City, Michigan, and she attended Michigan State undergraduate school. She was doing graduate work at the University of Michigan in the library science program, receiving her master's degree. We did a lot of studying together after that. We'd go over to the Rackham Hall. Rackham was a famous illustrator of children's books. It was actually more quiet than it was on the Law Quad, so we'd do quite a bit of the studying over there, to the extent we studied. We were very much in love and it was a nice journey.

I had visited Nevada the summer before because my sister Marian was teaching school in Carson City.

Now, this is interesting. Your sister graduates from Bradley.

Right.

And how does she make her way to Carson City?

She married a young man who was a son of professors at Bradley, and they just decided to come out west. They liked the Sierra Nevadas and she got a job teaching school in Carson City.

I visited her the summer of 1965, just to see the area because she had told me how beautiful it was, and I, frankly, fell in love with Lake Tahoe and the Carson Valley area, which is south of Carson City. I vowed at that point that if things worked out, I probably would want to head west too. I'd always had a desire to go west, but I didn't know exactly where. I probably was thinking in terms of California, but when I saw this particular

area with the Sierra Nevadas, I fell in love with the scenic beauty of the area, and she told me how warm and nice the people were in northern Nevada.

One of my sister's students was the daughter of Paul Laxalt, who was then the lieutenant governor. I called his office and asked if I could come in to discuss job opportunities. I went over to his office in Carson City and I spent probably at least an hour, or maybe an hour and a half, talking with the lieutenant governor Paul Laxalt. That was one of the wonderful things about Nevada. You could actually meet your public officials and they were willing to take time to talk with you.

When I left the office, he said, "We don't have any openings in our office at this time, but if you're still interested, I'll get in touch with you if I can find somebody that would be interested in taking you into the practice." I received a letter from him about five months later and he said, "There's a lawyer in the Carson Valley named George Abbott, who was Undersecretary of the Interior under President Eisenhower, and he said he would be happy to hire you as an extern for the summer if you want to come out for the summer." Sight unseen, I agreed to do that, and George and I talked over the telephone.

I came out that summer before I got married, and worked with George Abbott then, assisting him in his law firm the early part of the summer.

I went back to get married on July 2nd. My brother-in-law and I drove back and we were starting out two days ahead of time, so we were cutting it fairly close. The generator on our car went out in Wendover, Nevada. I didn't have a lot of money to get an airline ticket, although that would have been the last recourse. I couldn't get the car repaired in Wendover until two or three days later.

We were able to convince some people that had a motor home to let us follow them across the salt flats to Salt Lake City. I didn't have any lights on the car, and we followed them all the way across the salt flats into Salt Lake City that evening. And then when they opened up the service department there they fixed the generator, and I arrived in Brown City just in time for the wedding.

My goodness.

That was a harrowing experience getting back there. I think Mary Ann was a little nervous about it, but that was a very interesting journey.

NEVADA: A NEW LAWYER AND DISTRICT ATTORNEY

Then Mary Ann and I came out after we got married. It was our honeymoon to travel to Nevada and see if we liked it well enough to stay. And of course, we went to San Francisco and Yosemite and all of the beautiful areas in the Sierra Nevadas. We liked it well enough that we decided we'd probably come back to the Tahoe area after I graduated the next year.

So you have another year . . .

I went back and completed my final year at the Michigan Law School.

at Ann Arbor.

And Mary Ann got her master's in library science. Immediately after we graduated, we moved out here and I took a job with George Abbott.

Where was his practice?

It was in Minden, which is located in a beautiful valley at the base of the Sierra

Nevada mountains. George did a lot of work for the ranchers, including land matters and trusts and estates. He was heavily involved in the political scene. He was chairman of the Republican Party in Nevada at the time and he had been quite involved in the national scene. I remember he had been one of the main campaign advisors for Paul Laxalt when he was running for offices.

We rented an apartment in Carson City for two months and then we moved to Gardnerville and rented a very small house. It had three rooms in it, one central place where the heat register was, and that's where our son Mark was born in 1968.

I was going to take the bar the first year I got out here, but I wasn't permitted to take the bar because of the residency requirements. I petitioned the supreme court and the state bar to allow me to tack those two periods of time together, but I wasn't allowed to do that. I did file a lawsuit in the Nevada Supreme Court—that's the only lawsuit I've ever filed in my life—against the bar, requesting that I be given that opportunity. Then Chief Justice

John Collins called me and said, “We have your petition and we’re going to deny it. Do you want a formal denial, or would you prefer to just withdraw your application and we’ll refund the money to you for the filing fee?” I said that because of our financial position, we needed the money. Since I couldn’t practice for a year anyway, I didn’t need a formal opinion. I had the money sent back to me and withdrew my petition, and then I waited a year to take the bar exam.

It is somewhat ironic but about three years later, I was selected to be a member of the Board of Bar Examiners, and I served on the Board of Bar Examiners with one of my colleagues here, Judge Hagen, before he became a judge and certainly before I became a federal judge, for probably—I think I was on the board for about thirteen years. During that time, I advocated for the elimination of the residency requirement in Nevada. I felt that if a person truly had an intent to make Nevada their domicile and residence, they should be permitted to take the bar. Ultimately, the U. S. Supreme Court eliminated that requirement, but it was too late for me.

So I spent a year working as a law clerk for George Abbott and studying for the bar exam at the time that my son, Mark Scott McKibben, was born in April of 1968. Then my daughter, Susan Jennifer Wilson, was born in 1969. They’ve been the two best things that have ever happened to Mary Ann and to me. Parents could not have more wonderful children. They’ve been the apple of our eyes and a great joy to us all these years. We are very proud of them. Susan has a law degree and been a staff attorney for the supreme court in Nevada, and our son, Mark, has a master’s in business and is a Vice President of Heritage Bank here in Reno. Mark has two children, our grandson Alexander (Alex), and a granddaughter, Elizabeth, and Susan has two

children, our granddaughter, Annabelle, and our grandson, Zachary. I have to say having grandchildren is absolutely delightful. They are very precious and keep us young at heart.

That’s wonderful. Let me ask you a little bit about this time when you’ve come to the Carson Valley. Had you ever thought of or did you plan to take the Michigan bar?

I didn’t because I just felt that I was going to be situated out in the west, whether it was Nevada or California, and even at that time, I thought perhaps we’d be going to California. The three areas that we were really interested in were the Boulder area out of Denver, San Diego, and the Tahoe area. I really didn’t think that we were going to stay in the Midwest.

So that first year as a clerk for George Abbott, what sorts of things were you doing?

He represented a number of the ranchers in the Carson Valley, which is located in Douglas County south of Carson City. I’ll never forget that one of my assignments was to try to see if I could resolve a little dispute over one of the irrigation boxes, located on one of the ranches. I went out there, and these two farmers were there and both of them had shotguns. That was something I hadn’t learned anything about in law school. It all was fairly amicable, but when I saw them out there with shotguns, I got a little nervous. At least it was a reasonable encounter and the dispute got resolved.

I also attended several board of equalization hearings because George was doing quite a bit of work on land issues. That was my first contact with Bridgeport, California. We appeared there before the board of equalization representing ranchers

who had large ranching operations in Mono County, both sheep and cattle. While we were representing them I had a chance to see that area of the Sierra Nevadas. We now have a little cabin up in the Twin Lakes area out of Bridgeport., I had gone up there after the Board of Equalization hearings and looked at that beautiful area, which is the north rim area of Yosemite. It's gorgeous country . . .

It's beautiful.

and I thoroughly enjoyed the work. [laughs] George Abbott was an expert on water law, as well as land issues, as a result of his work in the Interior Department.

So at this time, you're also studying for the Nevada bar.

Right.

And were you doing that on your own or . . .

I did that strictly on my own.

You didn't take a review course?

I didn't take a review course. There were some old materials that people had that were in the library and I just studied those. I was successful on the bar. I was a little nervous because I had been out of law school for a year, but everything worked out well.

What was the exam like at that time?

As I recall, we were responsible for about twenty-eight subjects. I recall after the first morning at noon, we were leaving. We were in an elevator, because it was given at the old Masonic Hall in downtown Reno, and I recall that one of the applicants said, "Boy, that was a difficult bulk sales act question." I just looked at him. I wasn't sure what a bulk

sale was under the bankruptcy code, and I certainly didn't see any issue about bulk sales on the exam. So that made me really nervous. Quite frankly, I've never seen that person since. You just have to do the best you can and hope for the best. [laughs]

How soon after taking the exam did you find the results?

I think the results came out in October, and we were admitted then and had the ceremony at the supreme court in Carson City. After that, I continued to work with George Abbott. But shortly after that, I was asked by John Chrislaw, who was the district attorney in Douglas County, if I would accept a position as a deputy in the office. Bill Crowell Jr. from Carson City was one of his deputies. John asked me to come on as the second deputy in the Douglas County District Attorney's Office. I was admitted to the bar in 1968 and I became a deputy in Douglas County in 1969.

One of the first cases I handled, as I recall, was a case that involved Raymond Love, who owned the "Love Chapel" at Lake Tahoe. He performed many marriages, and the question arose as to whether or not he had a congregation and could actually perform these marriages. My recollection, although it goes back a number of years now, was that I was seeking an injunction on behalf of the county contending he was performing these marriages and wasn't qualified as a minister because he didn't have a congregation.

I'll never forget the morning of the hearing, Raymond Love showed up with several vans. There were a number of people in the vans and they set up chairs out in the front of the courthouse, and he gave a sermon. I knew I was in trouble with my case at that point because this was his

congregation. And I think we dismissed the case after that. These are things they didn't teach us at law school. [laughs]

No, absolutely not. Ann Arbor would have absolutely no concept of that sort of thing.

Right. That's right.

Were you active in community affairs at this time?

I was active in Young Republicans. I ultimately became chairman of the Nevada State Young Republicans. I was also a member of Rotary, although I resigned from Rotary when I went on the federal bench. They didn't admit women to Rotary at the time. In 1970, then I ran for district attorney when John Chrislaw retired, and I was elected district attorney in 1970.

What was that like to run for political office?

Well, I didn't have an opponent.

Kind of like running for student body president back at Bradley.

It's kind of unusual. Even when I was district judge, I never had an opponent. Mary Ann jokes with me and says it's because nobody else ever wanted those positions. She may well be right. But I did remind her that after I left the positions the races became contested. But I was fortunate nobody did file against me. Then I was elected in 1970, and I took office in 1971 and was district attorney of Douglas County from 1971 until 1977. I had the good fortune of working with two wonderful deputy district attorneys, William Crowell, Jr. and Steve McMorris,

who assisted me greatly during the years I was the District Attorney in Douglas County.

What sorts of cases did the D.A. in Douglas County . . .

Probably one of the most significant cases I handled was a case involving Kenneth Meller. He had robbed banks at Lake Tahoe and had kidnapped several people. Before he kidnapped the people, he was stopped by Gary Gifford, who was a state highway patrolman, on Highway 50 at Lake Tahoe. As a result of that stop, Officer Gifford was subdued by Meller. Meller flipped him over. Officer Gifford hit his head on a rock and he was unconscious. Meller removed the gun from Gifford's holster and shot and killed him. He then took hostages at the north end of Lake Tahoe. I ended up prosecuting him for capital murder, and he was convicted.

My recollection is this, that as Meller was leaving the courtroom, he looked at me and threatened me. Then I got a call from the warden several years later indicating that Meller had attempted to escape and they thought he was coming after me. They shot and killed him before he escaped. I always pretty much assumed from that, he may have been trying to come and find me, because that was the comment he made as he was leaving the courtroom. That was one of the most difficult cases that I had while I was district attorney.

As many as you want to tell me.

An elderly man, who had a number of DUIs, was driving his car. It was in the wintertime. He was driving on the highway south of Gardnerville, he had gotten up on a snow embankment and didn't know

it. The car was perfectly positioned so that the wheels were off the ground and he was behind the wheel, and he thought he was still driving. The wheels were going around. The patrolman came up to his car and knocked on the window. He looked out at the officer and he passed out because as he said, "How could this patrolman be standing there and I'm driving this car?"

I didn't know what to charge him with, because he was in control of a vehicle, but he wasn't actually on the highway. He was up on the snow bank, but he was still attempting to drive. I found an obscure statute that made it a misdemeanor to be intoxicated while in control of a vehicle next to the highway. He pled guilty to the charge. It was really an unusual case.

That's funny. That's a funny one. Are there other cases that stand out in your mind from this period?

One thing I did do as a district attorney was to codify all the ordinances in Douglas County. We eliminated a number of the ordinances and we codified others and this became the Douglas County code. That was the first time they had codified the ordinances in Douglas County.

We did have a number of cases, obviously, that involved schemes to defraud the casinos. One scheme was to shave the cards. The defendants had sandpaper glued under their fingernails. One of them played what they call the first base and the other played third base at the black jack table. They would shave the edges of face cards and aces so that when the person at the third base would be given the cards to cut that person would see where the edge of the card had been shaved and then cut the cards so that the next card

up would be either an ace or a face card; that would go to his partner at first base and would give him a slight advantage. The person on first base, when the person on the third base had cut the cards, would increase the bet.

The problem was, they did it too dramatically. They would bet very low amounts, and the player at third base would cut the cards, the other player would increase the bet dramatically. The person who would cut the cards would make such an effort to get down to look to see where the card might be shaved that the casino spotters detected the scheme fairly quickly. They found the glue and other fruits of the crime in their room at the hotel. People can be quite creative in concocting illegal schemes.

Juries are unpredictable.

One of the things I have enjoyed more than anything else, are jury trials. I've always had a great interest in the jury system and the excitement and drama of the courtroom.

THE BENCH

Let me ask you this. When did you begin to think that you might want to be a judge?

I had really thought that I might run for either attorney general or for Congress. That's what I had in the back of my mind. I wasn't sure if I really wanted to stay in the political arena and attend all of the functions you have to attend. I was a family person and liked to spend as much of my free time as I could with my family, but I still had an interest in politics. I had given that quite a bit of consideration, and then Noel Manoukian, who was the District Judge in Douglas County, was selected by Governor O'Callaghan to take a seat on the Nevada Supreme Court. I received a telephone call from Governor O'Callaghan and he said, "I really would like to have you consider accepting an appointment to the district bench in Douglas County."

I told him I would think about it. I wasn't sure if that's what I wanted to do and whether it was the best career move for our family. Mary Ann and I talked about it a great deal, and that's when we decided I should apply for

the judgeship. I think the primary reason for that discussion was the consideration of our family, our children, our desire to spend as much time as we could together and still be involved in public service.

Governor O'Callaghan used to enjoy telling the story that after the Judicial Selection Committee submitted the three names for the position and I was one on the list, he called me and asked me to the governor's office.

When I met with the governor he told me that he had decided that he would select me for the position. I was very pleased and honored and as I was getting ready to leave he said, "Oh, by the way, you are a Democrat, aren't you?" And he said, "You almost fell over."

That's not exactly the way I remember it, but I do remember him asking me that question and then smiled because he knew that I wasn't. He knew I'd been actively involved in the Republican Party for several years. It was an honor for me to have been appointed by Governor O'Callaghan because I had so much respect for him.

Right, right.

Then when I was appointed to the state bench. I had to run in two years. Fortunately I did not have an opponent for the position. The court's jurisdiction included both Douglas County and Lyon County. Later, the Nevada legislature enacted legislation in which Douglas County became a separate judicial district. I really did enjoy traveling to other jurisdictions to hear cases. I would go to Las Vegas and hear some of the high profile cases in Clark County that the judges there had reassigned. It was a very interesting period of our life.

I think I read somewhere you handled at least 350 cases, something like that, over the period of time you were district attorney. You did tell me about some of those, including a DUI case for a man stranded on a snow bank, a more serious case involving capital murder, and I just wondered if there were other cases from that time that you wanted to chat about.

During that period when I was district attorney, there were a number of cases that involved the Tahoe Regional Planning Agency. When Ronald Reagan was governor of California and Paul Laxalt was governor of Nevada, the states entered into a cooperative agreement, which ultimately became the interstate compact creating the Tahoe Regional Planning Agency. The compact was adopted by the Congress.

While I was district attorney we handled disputes between the county and the Tahoe Regional Planning Agency. A group of citizens in Douglas County conducted an "election," to secede from the Tahoe Regional Planning Agency. They set up garbage cans or cans that looked like garbage cans a distance from the polling booths and distributed

ballots so the residents of the county could vote on seceding from the Tahoe Regional Planning Agency.

Of course, I advised the county commissioners that was not a lawful election; that the county itself could not withdraw from the interstate compact. Congress would have to act. Notwithstanding that, the county commissioners certified the election. It didn't go much beyond that, but I do recall that there was a lawsuit filed and the grand jury hired special counsel to advise on that.

As a consequence, the county spent quite a bit of money, with the end result being, of course, that the county couldn't void the interstate compact. So it was a stressful period.

I recall there were three individuals who signed a petition to have me recalled as district attorney because of my legal advice. It was filed with the county clerk, but it never did garner any signatures, so it was not a serious effort. But it was, again, one of those periods where there was a great deal of concern by people in the county about the scope of the interstate compact. The environmentalists were concerned about the purity and the condition of Lake Tahoe, and the property owners felt their properties were being devalued without compensation. All the factions had very legitimate concerns. But the process that was being employed by certain groups made the job of the district attorney difficult but exciting.

Was that the time that some people refer to sometimes as the Sagebrush Rebellion?

The Sagebrush Rebellion, I think, was more in the eastern part of Nevada; it dealt with the cattlemen and others who were concerned about federal regulations. This was just concentrated on the interstate compact.

I see.

I always had a keen interest in juvenile matters, and we established the China Springs Youth Camp. It was an experiment. We didn't have any funding from the legislature to do it. Our thought was that we would develop a youth camp that would house incorrigibles, those who had engaged in conduct that involved crimes that were less serious than felonies. They were not crimes of violence.

In order to secure funding, we held a fundraiser at Lake Tahoe. Frankie Avalon and Smokey Robinson performed, and they donated their time. The event was held at the lake at one of the showrooms, and we garnered enough money from that performance to have the seed money to develop the camp. One of the ranchers in the Carson Valley, Stoddard Jacobson, donated the land for the camp. We started out with a small group of juvenile offenders.

The idea was that it would be a work-release facility. During the day juveniles would work on projects in the community. On other occasions they would be involved with the wilderness program. The juveniles would spend time with counselors on strenuous outdoor activity.

The recidivism rate, we found, was very low, and as a result the camp expanded, and today it's funded almost exclusively by the state. It has become a model and has grown now beyond what we originally envisioned it to be. I think it has proven to be a very, very successful venture in our effort to cope with the juvenile problems.

Was that the first youth detention facility like that in the state?

Yes, where it was privately funded and operated exclusively by the county. Because

it had such merit, I think, the legislature ultimately assumed the control and funding of the facility.

Are there any other facilities like it now in the state?

I'm not aware of any. The other thing I really enjoyed were adoptions. I had the right to engage in private practice. In those days, they allowed the district attorneys to have private practice, as well as perform their duties for the county. During that period, I would handle adoptions. I did not charge a fee. I would ask the parents, the adoptive parents, to take whatever money they would have paid me and place it in a trust account for the child. Those proceedings were very special to me, primarily because of my background, having been adopted. I think I was one of the first judges to allow cameras in the courtroom to record and memorialize those special adoption hearings. The activities with the juveniles, where I think we really did make a difference in the long run and then the adoptions, where you're giving a child a new life made me very proud to serve as a judge. I really enjoyed that aspect of my career.

There aren't too many happy occasions in court.

There aren't. You have the adoptions, and then, in the federal system, I had the naturalization proceedings. And those are the happy occasions. Everybody wins. So I've enjoyed those moments a great deal.

Right. Were there other criminal matters that you handled as district attorney that stick out in your mind?

I'm trying to recall. I do know that during that period when I was district attorney,

the county sheriff was involved in quite a tragic incident with an automobile. He was criminally prosecuted. While I was involved initially in those proceedings, because I also represented the sheriff as district attorney, the matter was transferred to a special prosecutor.

Ray Jeffers from Las Vegas, who was a deputy district attorney, prosecuted that case. It was tried in Hawthorne while he was acquitted of the charges, he resigned as sheriff and that ended his public career.

As district attorney, there's probably occasions when the actions you, by necessity, have to take anger people. Have you ever felt threatened by anyone in any situation?

I didn't feel particularly threatened. I do recall, right after I was elected, I attended a town meeting in one of the small communities in Douglas County. It was in Genoa, which is the oldest town in the state. The discussion centered on water rights. It involved a system of little canals for water. That's the way people irrigated their lawns in this community. There was some concern about the amount of water they were receiving. Some had allocations for thirteen minutes and some for twenty minutes, some for thirty minutes. I'm not sure that all of them liked the advice I was giving on that so I quickly learned you can't satisfy everyone.

Right. But no one has ever taken a shot at you or anything like that?

Oh, that's right. Now you did remind me of that. Right after I became district attorney, I thought I'd go out during the course of investigations and provide legal advice to the law enforcement officials who were involved in the investigations. One of cases involved a situation where a man was in a house. The authorities believed he had a gun and he

wouldn't come out. So I drove my car to the scene along one of the streets in Gardnerville.

I was driving our Datsun 260Z. As I approached the house along the street, I saw somebody in the window and I saw a flash. I ducked because I thought someone was shooting at me. I kept driving the car and I had my head positioned on the passenger seat. I kept driving beyond the home until I thought I was safe.

Then I got out of the car, the officers checked it and found a bullet hole in the side of the passenger door directly above where my head had been on the seat. If the bullet had come all the way through the door, it would have gone in the top of my skull. Fortunately, the door stopped it. It hit a metal piece inside the door and that stopped the bullet. Another bullet was found out on the street.

After the individual was arrested, they found out that he thought that I was a boyfriend of his girlfriend and that I was driving a car similar to what, apparently, he thought was the boyfriend's car. So a case of, perhaps, mistaken identity. But it was a very tense situation, and I decided after that I would let the police and the sheriff's office conduct the investigations. I would give legal advice and prosecute the cases that I thought were the appropriate cases to prosecute.

Less dangerous.

Exactly.

My father always told me it was better to do battle with a pen than with another weapon.

You know, that's true. I like that. I'll have to remember that.

Of course, in 1977 you are sworn in as a district judge. I think it was . . .

One thing I might mention before we get to that.

Oh, sure.

I did enjoy the administrative work with other district attorneys. I was fortunate to be the president of the Nevada District Attorneys Association during that period. We worked very diligently with the legislature on pay bills and legislation that impacted the prosecutors throughout the state. I really enjoyed working with the attorney general, Richard Bryan. He later became governor. He was very, very helpful with the district attorneys in trying to pass legislation that would benefit law enforcement in our communities.

In particular, I recall during that period that we were able to secure legislation in Nevada that strengthened the laws on child abuse.

I recall vividly when my son was in the hospital. He required surgery on his thumb. There was another child in the same room. That child's head had been severely damaged as a result of a blow from a stepfather. He was either a stepfather or a boyfriend. I made some inquiries and found out that the maximum penalty for that at the time would have been not more than six months in county jail. I vowed then that we should do something about the laws on child abuse. Through the Nevada District Attorneys Association and the assistance of the attorney general, we were able to strengthen the laws on child abuse and that was a very positive response to some very tragic cases.

I'm sure. What year were you elected, do you recall?

I went in as district attorney in 1971, and was reelected in 1975.

Did you spend time in Carson City lobbying?

I did give testimony. Certainly I was there talking with legislative representatives, either the state senators or assembly members, and it was an interesting experience in the legislative process. I had always been very interested in the legislative process anyway, and this was a chance to see how they conducted business in Carson City.

Sure. Those are important and significant contributions affecting children and colleagues working as district attorneys or prosecutors. It must have been very gratifying to be part of that.

It was. It really was.

Is there anything else from that time as district attorney in Douglas County that you recall that you would like to relate?

As district attorney, we also represented the school board because it was a small county. I thoroughly enjoyed that because my parents' background was in education, as I mentioned earlier. I would attend the school board meetings and give them legal advice on various aspects of educational issues such as salaries, benefits, contracts for the school, new construction for the school, any issues that involved the school districts. And I found that to be a rewarding part of the job we did in our office.

In terms of population, about how big was Douglas County at that time?

I think at that time we were probably, oh, between 15 and 20,000 population. That would include both the Carson Valley and the Lake Tahoe area—Douglas County included

both the valley area, which is at the eastern base of the Sierra Nevada Mountains, and the south end of Lake Tahoe from Highway 50 approximately down to the state line. So even though the population may have been 15,000 to 20,000, it would swell on weekends and the summer to 100,000 or 150,000 because of the tourists that would come to the south end of Lake Tahoe. That had a very significant impact on our caseload.

I do recall that, I think it was the last year I was district attorney, they had the bombing at Harvey's Casino at Lake Tahoe. We were involved in some of those early stages before I went on the state bench, in connection with the investigations involving that bombing.

And if you had to guess today the population of that same area, what would it be?

I would think now that it must be 30,000 to 40,000. I'm not really certain, but I know that it's one of the two or three fastest-growing communities in Nevada, and Nevada happens to be one of the one or two fastest-growing states in the country. So population-wise, it has really exploded.

We moved there because we loved the scenery and the rural atmosphere. It reminded us of the Pyrenees Mountains between Spain and France. In fact, there were a number of Basques that resided in the valley. Mary Ann and I loved to take our children out to eat at the Basque restaurants.

I'll never forget when I first moved to the Carson Valley in 1967 and was working with George Abbott we would have those wonderful Basque dinners. The very first time I went to the Overland Hotel, which was a Basque restaurant we had a picon punch. I'd never had a picon punch before, and I can understand why they call it a punch because it was a very strong drink. But it was a sweet

drink and you didn't realize it until you finished it. That was my perhaps one and only picon punch. But it was quite an experience for me particularly since I really don't care for alcoholic beverages.

If you like, we can turn to your experiences at Douglas County. I guess originally Douglas County and Lyon County district judge . . .

That's right.

and that was originally the Third District.

That's right.

You're sworn in as the successor to Noel Manoukian. Do you recall your first day going on the bench?

I recall being nervous, because it certainly is—I'd been in the court a lot, so it was a little easier for me. And of course, I was in the same courtroom where I had been practicing. But even though I had been on the other side of the bench and worked with juries, it was quite a different experience for me to go through the selection process, where I'm neutral and not an advocate. And I found that different and challenging, but it seemed to flow fairly easily. I don't think I was as nervous when I went on the bench and handled my first trial as I was when I was a prosecutor and handled my first trial in court. I had been in court enough by then that it was a fairly easy transition.

TRIAL PROCEDURE

At that time, did the State of Nevada offer any kind of training or schooling for new judges?

They did. Shortly after I became a district judge, I attended the National Judicial College in Reno and took the three-week course, which was an intensive course for new judges, state judges. I found it very valuable. The courses on evidence, and trial practice, were excellent and issues that were our bread and butter, what we had to do. What I found most valuable about it was the interchange with other judges from around the country. The experiences that they had and the common concerns that they had about recurring problems, particularly working with juries and the jury selection process, the *voir dire* and trial procedures and nuances that would come up during the course of the trial. That I found very, very valuable. I think the National Judicial College has performed a very valuable service to our judiciary over all these years. We are very fortunate that it is located in Reno.

In fact, shortly after that, I started teaching at the National Judicial College. I taught

there for about twenty years. I taught Fourth Amendment issues. Then I taught sentencing issues and then I taught jury issues, and most recently I've been working some on their international program. I found it very, very worthwhile. The most fascinating part of the course is the interchange with other judges.

Oh, I'm sure. Thinking about that experience way back in 1977, in talking with other judges from around the country, you mentioned that one of the issues that everyone had an opinion or experience with or wanted to talk about was voir dire. What about the voir dire process was significant?

Just to be able to balance the rights of jurors to have some privacy and not have to expose their whole life, and yet ensure that we secure a fair cross-section of the community of jurors who will be fair and impartial, both to the government and to the defense or to the plaintiff and defendant in civil cases, and to make it comfortable for the jurors. I always have felt—and I continued on the federal

bench to feel this way—that jurors provide an incredibly wonderful service, the time that they take, the commitment that they have to make in order to serve on juries, and they’re not paid very much for their services.

I like it to be a really pleasant experience for them and a learning experience for them. I like them to be able to say afterwards that, “Maybe initially we didn’t want to serve on this trial, but we’re really pleased that we did.” My staff and I always do everything we can to consider the jurors to be the most important people in that courtroom. I really consider the jurors to be the best goodwill ambassadors we have in the community. If they have a good experience, that will say volumes about our criminal justice system and our civil justice system. We take a lot of extra effort to make sure that jurors are comfortable, that they are well cared for, that they understand what is going on. We try to simplify jury instructions. We try to do everything we can to make the process an understandable and simplified and yet fair process for everybody, including the jury.

I know some judges take a very active role of voir dire and do all the questioning themselves. What do you do?

I have a hybrid system where I ask a lot of the questions, but then I open it up to the attorneys to ask questions, follow-up questions. I probably allowed more questioning by the attorneys when I was on the state bench than I have on the federal bench, and I think maybe that’s just because of experience over the years. Having been on the bench for a number of years, I know the range of questions in the types of cases that we have. And it’s been my experience that the attorneys, by and large, are fairly satisfied with the questions that are asked and the attorneys

ask very few questions afterwards. I do have the attorneys submit a list of questions to me, and then from those, I’ll select the ones that I think should be asked. Then I allow attorneys, on a limited basis, to do the follow-up questions, and I’ve never had a problem with that.

I do know that there were some techniques that we used from the time I first went on the bench that we’re still talking about. In fact, at our judicial conference we are still talking about jury issues that we adopted twenty-nine years ago when I first went on the state bench, including the right of jurors to ask questions. I’ve allowed jurors to ask questions ever since I went on the bench. They have to write them out. I’ve always allowed jurors to take notes, to try to work out a schedule that accommodates the jurors if that means a partial day or a whole day, whatever seems to work best for that jury and for the type of trial that we have. We’ve been doing that either on the state bench or federal bench since I’ve been a judge for some thirty-three years. It’s interesting to see that judges still do things differently, and those are matters we talk about at the Judicial College too. But it always has worked well and I’ve always been very pleased with the jury process.

Of course, as the only judge in a particular district, you just take what comes in the door, I suppose.

You do

You don’t have much choice.

unless you have a bias or a prejudice on a case. Whether you really want to hear that case particularly or not, it’s your obligation—the oath that you take requires you to resolve those disputes. While I was district attorney,

I had a calendar in both Douglas and Lyon counties. Every Monday I would drive to court in Yerington. It was about an hour drive. I would start out early in the morning. Having grown up in a farming community, I was an early riser and I usually liked to start my cases at eight or eight-thirty in the morning.

There were many occasions when I had to start out a half an hour earlier than usual because there would be sheep drives and cattle drives, and I would be stranded there on the road waiting for maybe ten or fifteen minutes until they could move the animals into the fields. I always found that really fascinating to just think, there I am in my car weaving among the sheep or cattle, and what a wonderful area we lived in. It was a treat to have served in Lyon County too.

How long did that last that you were judging both counties before the legislature reorganized?

I think that was about three years, and then we worked with the legislature during that period and they adopted a redistricting plan for the courts. Lyon County and Churchill County became one district and Douglas County became the Ninth Judicial District Court. Ultimately, two judges were assigned to our court and we split off from Lyon County. Judge Robison became the other judge while I was there in Douglas County.

Not long after you became a judge, one case, I think, that came before you involved the Herman [phonetic] estate. Do you recall that?

I do. That was a case that I inherited. Judge Manoukian presided over that case before he went on the Supreme Court. It was a case that involved the probate of an estate in Lyon County, and the attorneys had filed a petition for fees for absent heirs, as I recall. I reduced

the fees and referred certain portions of that case to the state bar for further investigation. That was a very difficult decision on my part, but one that I felt was appropriate under the circumstances because of affidavits that had been filed in that case. It resulted in actions by the Board of Governors of the State Bar of Nevada and also by the Supreme Court on the case that I had. I recall it vividly because I had injured myself in racquetball and was sitting there during those hearings with my leg in a cast.

Oh, my goodness.

But it was a difficult case. Had you heard about that case in another context . . .

Oh, in just going through some of the newspaper files . . .

Oh, some of the newspaper clippings, yes.

I came across that one, so I made a note here to ask you about it.

Right.

Are there other cases from that period as a district judge for the state that stand out in your mind?

I remember one case where the prosecutor in Douglas County had filed criminal charges against a midwife, and the question was whether or not a midwife could be prosecuted criminally for practicing medicine without a license. I held a hearing and I had midwives in the audience. I had mothers who were actually nursing their babies in the courtroom, and there were pediatricians in the courtroom. It was a highly charged case. I ultimately ruled in that case that a midwife could not be

criminally prosecuted under existing statutes because the legislature had not clearly and unequivocally criminalized midwifery. So that terminated that prosecution.

To the best of my knowledge, for many years thereafter and perhaps up to the current time, there are still provisions in the statutes in Nevada that refer to midwives. I don't know that the legislature has ever criminalized or indicated that midwifery is the unlawful practice of medicine but I doubt it because I know midwives are still delivering babies in the state. I held that if the legislature were to criminalize the practice, they'd have to do so expressly and clearly and that it really was up to the legislature to make that determination. But a person couldn't be prosecuted for serving as a midwife and delivering a child unless the statute clearly made that a crime.

I tried to make it a point to sit in courts throughout the state. I think I missed sitting in only one jurisdiction during the period I was on the state bench. I probably would have served there, except I went on the federal bench and didn't get a chance to. But I really enjoyed going to other courtrooms, whether it was in Tonopah, or Austin and Eureka, Elko and Lovelock. It was really enjoyable to sit in those jurisdictions.

What's the process that determines visiting judges going to a different jurisdiction?

If a judge had a conflict, then we could be appointed through the supreme court. I was always willing to do that, as long as we had time to do it, because I enjoyed that a great deal.

While you were a district judge, were there ever attempts to create an intermediate court of appeals in the state?

They talked about that, and I have always been in favor of it because the caseload of the supreme court is so large. They should either expand the number of the supreme court justices or have an intermediate court of appeals. There were a number of efforts to do that, and the voters were not in favor of creating it, even up to the current time. But that's never been approved, so I don't know whether there'll be another effort to do that or not.

Interesting. Did you ever sit on the supreme court with Noel Manoukian?

I did, because when I sat there he was on the court, and I also recall sitting in other jurisdictions on death penalty cases. They would have three-judge panels to determine the penalty and I'd be called upon to sit on those cases.

The actual procedure within the state, was that by statute?

It was, yes. It was, and so I did that on occasion. I recall one of the very difficult cases that I handled was on assignment to Carson City, it involved the death of a young child. The question was whether the child's death was accidental or whether the mother and stepfather were criminally responsible. The defendants were ultimately convicted of I believe second-degree murder. It was a very tragic case. There was evidence in that case of what's called forensic odontology, which was dental impressions of bite marks on the child. It was the first case that I'd handled involving human bite marks on a child.

I was concerned about the publicity and the impact a hearing on the admissibility of that evidence would have on jury selection.

I convened a hearing, which was a public hearing at six o'clock the morning of the trial, and nobody from the media was there. We had a hearing. I made my ruling, and we started selecting the jury at eight-thirty in the morning. So the jurors were not aware of the issues. The publicity wasn't before them at that point, so it made jury selection easier.

We kept our hearings open. I have always strongly believed that, except in exceptional circumstances, court proceedings should not be closed unless it's to protect minors, or if there are statutorily authorized reasons for closing hearings or trials.

What are your feelings about cameras in the courtroom?

I have mixed feelings. Cameras were authorized in the courtroom in the state court. At some point while I was a state district judge. I actually allowed cameras in the courtroom for adoption proceedings, before they were legislatively authorized. I just felt these were special occasions. I'll never forget holding twins in my arms as they were adopted. I allowed the parents to bring their cameras in and record the hearing.

Once the legislature authorized cameras I did have the cameras recording the proceedings on occasion, but we would always do so under structured conditions and only allow one camera. If there were several agencies that were interested, then they'd have to pool their resources to have one camera. And I never allowed them to film the jury or minors on the stand. They were very careful about that and always honored the rules and regulations that we set out. I really didn't find it to be a problem.

I'm not sure that it would be a major problem in the federal court. On balance,

I would be willing to have cameras if that's what's authorized. I think the O. J. Simpson case and other cases like that might suggest that cameras can be a distraction. If that happens, I don't think the interests of justice are served by having cameras. I think you have to be very, very careful about developing very clear regulations.

I know that's a matter that's still under discussion by the Judicial Conference. The conference has allowed experimentation with it in the federal circuit courts. I think the Ninth Circuit does permit cameras at hearings. I'm somewhat neutral on the subject. I like the public to be able to know, but it isn't my experience that they televise very many proceedings from gavel to gavel. They give the public snippets and it doesn't give you a full flavor of what's happened. I think that can be unfortunate, too, but that's the nature of the media.

Right. Right. They look for the . . .

That's right, the kind of sensational part.

the sensational. Absolutely. You mentioned earlier today that when you were a district attorney, you were president of the Nevada District Attorneys Association. Is there a similar organization for state judges?

There was, yes, and I was fortunate to be elected as president of the Nevada Judges Association. We worked hard on benefits for judges and salaries for judges, and that was rewarding work too.

Going back to interesting cases that I handled there was a case in Lyon County that involved a woman who had developed aplastic anemia. This was a condition in which she had a deterioration of white cell counts

and, therefore, she was not immune from almost any type of infection. This was a rare condition, and it was alleged that this was caused by ingesting Chloromycetin, which, in the early fifties, I recall, when I was growing up, was a wonder drug. But the warning label indicates that a statistically provable number of individuals can develop aplastic anemia from taking that drug.

The suit was against a very respected doctor in Lyon County who still made house calls and he'd been prescribing this medication. I recall there were a number of attorneys from the Reno area and elsewhere that were involved in that case. We had a member of Ralph Nader's organization there. A Dr. Kruger of Stanford, who was one of the foremost hematologists in the world, testified.

There was evidence that this woman developed—when she was at Stanford being treated, a thyroid storm. Her temperature went up to 106 or 107 degrees, and she was immersed in ice and that kept her alive. Ultimately, she did survive that attack.

The jury was deadlocked on the issue of negligence. We set it for retrial and they resolved the case, but it was one of the most interesting cases I have heard.

One of the things I enjoy as much about the bench as anything is that human drama is being played out every day in some form. It's like a different chapter in a book that you look forward to every day.

It must be. It must be very rewarding to have that kind of intellectual challenge constantly.

It is. It is. And it's really rewarding when you get letters from jurors who have served and they tell you in their letter that initially they didn't want to serve. They thought it would take too much time. But they found it to be one of the most valuable experiences

that they've ever had. It's nice when you get something like that. That really makes it all worthwhile.

Do you get complaining letters too?

I don't recall ever receiving one from a juror, but I certainly have received such letters where we have cases involving tax protesters.

I'm sure every judge does.

Right, and some of them can be somewhat threatening, and that's just part of your job. You trust that people will not follow through with those types of threats. You can't live in fear.

REFLECTIONS AS A FEDERAL JUDGE

I believe it was in 1984 that you got nominated for the federal bench. Can you tell me the circumstances behind that?

I knew that there had been new legislation that created a federal judgeship in Nevada. I hadn't really given a lot of thought to it. Our family was in northern Idaho visiting my sister when we received a telephone call suggesting that I should express my interest in the judgeship by letting Senator Laxalt know. I really didn't have access to a typewriter when I was there. So I went to the local library and I prepared a handwritten letter and sent it to Senator Laxalt and expressed my interest. Later, Clark Guild, who was designated as part of a selection committee for Senator Laxalt, commented about the handwritten letter and that they thought that was quite nice to receive a handwritten letter.

After that, I then returned to Nevada, and it was, I think, Bill Senate, who was on Senator Laxalt's staff, interviewed those who were interested in the position. After that, the FBI started doing background checks on

me, and they, at the same time, were doing background checks on Melvin Brunetti. Mel and I discussed it because we weren't certain whether we were both being considered for this position or just what was happening. We thought it was unusual that the FBI would be asking questions about both of us when they were out talking with neighbors and members of the legal profession.

But he wasn't a judge at that time, was he?

No. He was in private practice and he'd been in private practice earlier with Senator Laxalt in his firm in Carson. We talked about it and discovered that it appeared that he was being considered for the Ninth Circuit Court of Appeals and that I was under consideration for the district judgeship in Nevada. They did that background, and this was, in July that we got the word. This was an election year. President Reagan was in his first term and was running for reelection.

They finished the background in the early fall and we knew the Congress was going to

recess in October. Senator Laxalt called one day and said, "Howard, we've had to make a decision on which of these spots to fill, and because of the critical need in Nevada and the district court for a new judge because of the situation in the south where Judge Claiborne's position was in limbo and the huge backlog of cases there," he said, "we've decided that you should go first and that we'll fill the Circuit position after the election." He said, "You need to get on an airplane and come back here. Your name has been moved to one of the ten that will be considered before the Congress adjourns."

Mary Ann and I immediately made reservations and flew out that day, took the red-eye to Washington, D.C. When we got back to Washington, I talked with Duke Short. Duke Short was the administrative assistant to Senator Strom Thurman. At that point, the Senate Judiciary Committee was already out of session. The Congress was still in session, but they were going to adjourn the following day. I talked with Duke Short, and Duke Short advised me of the questions that he expected the Senator would be asking me. When I first walked into his office, I was concerned because I saw stacks of boxes there that had the word "protest" on them, and I asked him, "Are there that many protests to my nomination?"

He laughed and said, "Oh no. We haven't had any protests to your nomination. Those are all for Ed Meese." Ed Meese was being considered for attorney general at that point and these were boxes that related to his confirmation. I breathed a sigh of relief. And he gave me the questions that he thought Senator Thurman might be asking. I went over to the Library of Congress with Mary Ann and we did a little additional research on the issues that might arise during the questioning at the judiciary committee hearing the next day.

Then I went to the capitol the next morning to testify in the hearing room of the Senate Judiciary Committee. This was interesting, because I sat down at the witness table and Mary Ann was right behind me. Senator Thurman was the only person from the Judiciary Committee that was there, other than Senator Laxalt, and he was there to introduce me along with Senator Hecht, who was our other senator, the junior senator. So Mary Ann sat right behind me and Senator Laxalt was to my side and Senator Hecht the other side. Senator Thurman came in as the only member of the committee. The way it apparently works when they're out of session on the judiciary committee is that they send a box around with white balls and black balls in it.

Almost like a fraternity election. [laughs]

Almost like that. And if all white balls are dropped by the senators on the committee, then you'll be approved. If one black ball is dropped, that's the end of your nomination, at least for that session.

When Senator Thurman came in, I saw him speak with Duke Short for a moment. I didn't know what he was saying. Then he proceeded to ask me questions, and they were similar to what I thought perhaps I'd be asked. He was interested in judicial activism, even in those days, and issues about the death penalty and whether or not judges should be responsible for administering prisons and schools and issues of that nature. After I responded to those questions, Senator Thurman thanked me and I thanked him and we talked with each other for several minutes and with Senator Laxalt. And then at the end, I said to Duke Short, "I noticed that Senator Thurman said something to you when he walked in." I said, "Do you mind if I ask what he said?"

He said, “No, it’s perfectly fine. It really wasn’t that confidential.” Senator Thurman said, ‘Who’s that pretty little lady behind the judge?’ I said, ‘Well, that’s the judge’s wife.’ And he says, ‘Well, we need to confirm this judge.’” [laughter] So I’m not sure if I was selected on merit or because of my dear wife, Mary Ann.

As I recall, Senator Thurman had quite an eye for the ladies.

Then we went back and watched the proceedings on the Senate floor. We were told that they were going to adjourn and that we could fly home because they are going to act on the judges early in the morning. At three o’clock the following morning we were advised that the Senate had adjourned, and just before adjournment, my name, along with nine others, had been approved, and we just awaited the signature of President Reagan on my commission.

Before this happened, I did receive a call from President Reagan.

A personal call?

A personal call. I was in my chambers in Douglas County and my secretary Beverly said, “The president’s on the line.” I said, “what president” and she said “the President of the United States.” I knew what he probably was calling about, but it was still unexpected. I didn’t know that he called the nominees. I got on the telephone, and the president’s administrative assistant was on the line and she said, “If you’ll hold just a minute, Judge, I’ll put President Carter on.” And she said, “Oh dear, did I say Carter? I’ve been with so many presidents.” She said, “Please don’t say anything about that to the president.” [laughter] Now, maybe I should

have maintained that confidence, but I thought it was funny.

We joked about it and I told her I wouldn’t tell the president. And then President Reagan came on and he was so gracious. He said he was just delighted to be placing my name in nomination, that he had the highest regard for Senator Laxalt, whom he considered an outstanding public servant and an outstanding person. He said Senator Laxalt said I was the right person for the position. He also said he had looked at my qualifications, he felt that I was well qualified and that it was an honor for him to appoint me to the judgeship. We had a very pleasant discussion. It probably lasted two or three minutes, and at the end, I’ll never forget he said, “And God bless you and God bless your family, Judge McKibben.” I thought it was really a very warm and touching thing for the president to take the time to call, which obviously he didn’t have to do. It was something that we’ll always remember.

You’re not the first judge who’s told me that . . .

Is that right?

a story like that. Apparently, it was a hallmark of him and I think it speaks volumes about the kind of man he was.

It really does. It does.

It’s extraordinary.

Yes, it was nice. Yes, it was a very moving moment for me to have been able to talk with the president. You don’t do that very often, and especially if they call like that, so it was a nice touch.

And your nomination and confirmation, it’s so unusual, given the circumstances today.

It was, in a sense, quite extraordinary, to go through the process—in such a short time. I think a lot of that can be attributed to Senator Laxalt and the tremendous respect he had in the Senate. I certainly was honored to have the president call me and nominate me. I was also extremely honored to have had Senator Laxalt be the person that presented my name to the president, because I have always had the highest regard for Senator Laxalt and have from the early days when I first came out here and met him. He served this state with great distinction as our lieutenant governor and then governor and senator, and so it was a great honor for me to have Senator Laxalt show confidence in me for the judgeship.

There was something else I was going to say about that. I have these senior moments. You know, the great thing about having a senior moment is that you can hide your own Easter eggs. [laughter]

I understand there were circumstances that came to light regarding this position that made you stop and think hard about whether you wanted to accept President Reagan's nomination to the U. S. District Court.

That's true. At about the time that my name was going to go forward and it appeared that my nomination would go before the Senate, I received word from Carol Fitzgerald, who was then the clerk of the court for the district of Nevada, and she advised me that the judges had determined that the duty station for this new position that had been created under the omnibus court bill, and that's what this position was, would be Las Vegas, and that was the first time I knew that. I had always assumed that the position would be in Reno.

At that point, my son and daughter were in middle school, early high school years,

and so we had a family counsel and talked in some depth about whether or not I could make this transition. We didn't want to move to Las Vegas. I thought it was unfair to have my family move to Las Vegas, even though they would have been willing to make those sacrifices, especially when your children are in high school and it's a very important period of their lives.

We were able to make arrangements to accommodate everyone. I rented an apartment in Las Vegas and went to Las Vegas on either late Sunday evening or early Monday mornings and would be involved with the court in Las Vegas then Monday, Tuesday, and Wednesday and Thursday. And then Thursday evening I would fly back to Reno and hear cases in Reno on Friday and spend the weekend with my family, and then do the same thing the following week.

I did that for about two years until we were able to transfer to Reno. And then I spent a good deal of my time in Reno. That was a very difficult time because it meant that I couldn't attend all of the events that I wanted to when my children were in high school, whether it was tennis matches and other activities. But it worked out well after the first two years.

I will always be so grateful to my family for making the accommodations that they could make so that I could fulfill a lifetime dream to be on the federal bench and also spend quality time with my family, which, frankly, was the most important thing to me. Family has always been more important than a job or anything else. It worked out, but it was definitely a difficult period for all of us.

It was sort of a twentieth century version of the old circuit judges of the nineteenth century.

Riding the circuit, right, and I did that in the state court. I was riding the circuit,

because I went from Douglas County to Lyon County, Churchill County, and other places. And I frequently, as I indicated earlier, went to Las Vegas a great deal, but at least I was home. My base was home, whereas initially on the federal court, my duty station was in Las Vegas. Fortunately, it only lasted about two years.

You had a very quick swearing-in, as I understand it.

Right.

Tell me the circumstances behind that.

As soon as I got the word in San Francisco, as we were flying home, that the Senate had confirmed the appointment by giving their advice and consent. I was able to wrap up my court duties in Douglas County rather quickly. Within five days after that, I took the oath. It was on October 12, 1984. We held a ceremony later on, both in Las Vegas and Reno, but the official oath was administered by Judge Reed in Reno on October 12, 1984. And then shortly after that, I was on my way to Las Vegas to start trying cases.

I kept chambers here in Reno and had a courtroom at the courthouse on Booth Street. GSA remodeled some rooms on Booth Street so that I would have space. It was the fourth floor.

I was with Judge George in Las Vegas and Judge Foley, and that was a critical time for our court because Judge Claiborne had taken a leave of absence. As a consequence, the caseload that Judge George and I confronted, and Judge Foley, was substantial. If I'm not mistaken, we were either first or second in terms of weighted cases per judge in the country at that time. I think we had somewhere in excess of seven or eight

hundred cases assigned per judge during that period of time.

I'll never forget the first day I appeared in Las Vegas. Preston Bluett, who was the deputy clerk of court, had brought some current cases into my provisional chambers. I call it that because I had a small room in the corner down there. They didn't have a chambers that I could occupy, and the cases were stacked halfway up to the ceiling, and those were just the cases that we were to try, not the motions and what have you that had to be decided.

I know during the first eighteen months I was on the federal bench that I tried approximately fifty-five criminal jury trials, and of course, a number of motions and civil cases and civil trials in between that. On one occasion, I had three juries going at the same time. One was deliberating, one I was selecting, and I was in the middle of a third trial. Those were very difficult times for all of us. I know Judge George had a comparable caseload, so we were doing everything we could just to stay above water.

Shortly after you were sworn in, I understand there was a meeting with Judge Thompson and Judge Reed and Judge George, maybe even Judge Foley, about what you were going to be handling. Was that all down in Las Vegas or did that happen up here, or do you recall?

I know that we met. I can't recall if we met in Las Vegas or in Reno, and I know we discussed the distribution of the caseload, and that's when we just reformulated the plan that I'd been advised of earlier that my duty station would be in Las Vegas, and they basically confirmed that I would be able to handle a caseload in Reno, which enabled me to be in Reno on Fridays and Las Vegas Monday through Thursday. That's the routine that I

had then for about the first two years that I was on the federal bench.

Did they simply give you Judge Claiborne's caseload?

No, I think we had a new draw. I took a lot of those cases, but I took cases that some of the other judges had too. And of course, I took some cases from Reno for the calendar that I had on Fridays, and those came from the judges; it would have been Judge Thompson and Judge Reed in Reno.

How did the judges in the district feel about the Judge Claiborne situation?

It was a very difficult time. Our judges were, for the most part, pretty much insulated from any of the proceedings themselves. We were never interviewed about it. There was never any contact with the judiciary in connection with that matter, but we all sensed it. We knew that it was a difficult time for our district, and that's one of the reasons that we had so many cases. It was so difficult for us to accommodate the attorneys on both the civil and criminal dockets in handling those cases, even though we were working nonstop on them. That was a period that we desperately needed new judgeships and we didn't actually secure any new judgeships for a number of years after that. But that was the impact.

In looking at that pile of cases that the deputy clerk brought in and stacked almost to the ceiling, what did you feel about that?

I had considerable experience on the state bench trying cases while I was a state judge, and so I was ready to take those cases on immediately and to handle them. But the sheer volume of them was kind of depressing.

I know there were times we had calendar calls where there were in excess of a hundred cases that were called on a given Monday for a two-week stack. When you have to go through a hundred cases, civil and criminal, on a two-week stack, you know it's just going to be very difficult for the attorneys, for the members of the bar, for the bench to be able to accommodate everyone. We were able, over a period of time, to move through those cases and get it down to a manageable level, but it took Judge George and me, and to some extent Judge Foley, a considerable amount of time to do that.

You had considerable experience as a judge coming into the federal system. I know that when other rookie judges come into the federal system, sometimes they're assigned a mentor or someone else who they can confer with. Did you have anyone like that?

I didn't have a mentor, but Judge George and I developed a very close bond and he was of tremendous assistance to me in Las Vegas. Judge Foley was also of assistance to me, and when I was up here, of course, both Judge Reed and Judge Thompson were just wonderful. I think it would have been very, very difficult for me if I hadn't had such wonderful colleagues to cope with the volume that we had the first two or three years.

I'll be eternally grateful to Judge George and Judge Foley and Judge Reed and Judge Thompson for the courteous way in which they introduced me to the federal court, assisted me, and all of them were wonderful mentors to me. And I think that has carried over, even today, with the collegiality we have on our bench. It is really a hallmark of this district with the wonderful spirit and feeling that we have among our federal judges of a collegial atmosphere and a willingness to

share and to take cases and divide cases so that we keep a fairly balanced calendar among all of us. It's just been one of the finest districts to serve as a federal judge, I think, of any place in the country.

You mentioned that one of the ways you dealt with this enormous caseload was to triple-set your cases. Had you ever done that before as a state judge?

When I say triple-set, that was actual trials that we were in, but for that two-week stack, sometimes we'd have a hundred cases. I'd just be trying three of them at the same time. I'd never done that as a state judge. We had the luxury, particularly toward the end of my term as a state judge, to set maybe one, two, or three cases on our stacked calendars, not a hundred. So it was a total sea change from the volume that I'd experienced before. And, the complexity of some of those cases made it even more difficult.

Were there any special techniques or tricks that you developed or others told you about that you implemented to manage such a tremendous amount of work?

I held a lot of hearings. I was almost continuously on the bench and I was able to dispose of many motions orally. I'd hear oral argument and then decide those from the bench, and to this day I continue to do that on a fairly regular basis. In addition, I tried to expedite the time periods and the cases that we tried, tried to constrain the attorneys to limited times without actually putting them on a clock. And I found that as long as we didn't take excessive recesses and moved right along, it worked pretty well.

Jurors have always been a particular love of mine. I've been very involved in the jury

system, taught at the National Judicial College on jury issues and many other issues, but my particular focus has been on jury matters. So I would, in our jury trials, do everything I could to accommodate jurors and let them understand that I believed that they were the most important people in the courtroom. They are the finest goodwill ambassadors that the members of the judiciary and the bar have in our community. I wouldn't waste their time, and if we don't waste the jury's time, we're not wasting our time. I would take up motions at noontime or in the evening or early in the morning, and then we'd streamline the trial process so that we could try these cases in an expeditious way. It seemed to work fairly well. When attorneys would estimate that a trial was going to last four or five days, I knew that we'd probably be able to do that trial in a day and a half.

Oh, that's interesting.

And that's how we would move the calendar along. And it didn't take long, I think, for the word to get around in the legal community that those cases were going to be tried in a day and a half. And when I said to have all of your witnesses available that first day, it wasn't long before they always made sure they had all their witnesses available the first day, and we didn't have any downtime and we could move along. And we're still doing that.

When you were suggesting to the attorneys that the case was going to take a lot less time than they were anticipating, did you find that there were settlements that suddenly came to the table?

They knew the cases were going to go to trial, and once they knew that the cases

were going to go to trial, they, in fact, did settle many of the cases. They knew that they wouldn't get continuances and they knew that within a week or two we'd get to those cases if they were on our calendar, on our stacked calendar. So that, I think, encouraged settlement for the ones that were going to settle at some point because they had firm trial dates and we knew we'd get to them. And that helped clear our calendars considerably.

I would think so.

That they did.

Were you also handling a lot of criminal matters?

Yes. As I indicated, that first eighteen-month period, the two years, I think it was about fifty-five or fifty-six criminal jury trials that we had, each of us, both Judge George and I. And then we had the civil cases, in addition. There was a tremendous backlog of criminal cases and those had priority. We just dug in and got those cases disposed of as quickly and expeditiously and fairly as we possibly could.

I think I read in an article about your confirmation and elevation to the federal bench that one of the first matters you held as a federal judge was a naturalization ceremony here in Reno. Do you recall that?

I do. One of the most pleasant things we do on the federal bench is to preside over the naturalization proceedings. I always enjoyed adoption proceedings in the state court, and naturalization proceedings I consider to be something akin to the adoption proceedings because, in effect, as I tell those who are becoming new citizens of the United States, they're being adopted by a wonderful

country; and that they'll have all of the great privileges and rights that a young child who's adopted has in this country. And so it was a wonderful experience for me to preside over those ceremonies, which are so important to so many people and have an impact on our country in terms of the diversity that we have.

Where was that held? Do you recall?

It was in the ceremonial courtroom on Booth Street in Reno.

Now, one of the early criminal matters that you handled involved a smuggling case, involved drugs. I believe it was close to two hundred pounds of cocaine had been brought into Las Vegas, and there was a conspiracy or an alleged conspiracy of six individuals from the Caribbean and Colombia, and a fellow named Barry Seal [phonetic] testified with immunity.

Right.

Do you recall that case?

I do. It was one of the most fascinating cases I think I presided over in all the years I've been on the bench. Leo Moreno was the leader of the conspiracy that brought the 189 pounds of cocaine from the Bolivian jungles to Las Vegas. As I recall, we started out with about eleven defendants in that case. I believe we ended up with seven defendants that were actually tried. One was the person who was the equivalent of the attorney general in the Turks and Caicos Islands.

The reason the case was so fascinating was because of the extensive amount of drugs involved and the fact that Barry Seal, who had been, as I recall from the testimony, one of, if not the youngest pilot in the history of TWA to fly the 747s. He gave up his position with

TWA to, in collaboration with his brother-in-law, import drugs from South America.

We started the trial, as I recall, late one week—I think it was on a Friday—and because of testimony that was given that I found was prejudicial to the defense the first day of trial, I had to declare a mistrial. We then selected another jury the following Monday. There was quite a bit of publicity in the newspaper over the weekend about the trial and I was concerned whether we could get a fair jury. Surprisingly enough, we were able to select jurors, most of whom had no knowledge of the case. We're always concerned about pretrial publicity, but for the most part, we find that there are many jurors that are selected, ultimately, that have not heard anything about the case through any form of the media.

At that time, Barry Seal was in the government secret witness protection program. He had been in the program for some time because of the potential threats on his life. When he appeared and testified in court, he was guarded by at least ten federal marshals. When he testified—I rarely ask questions in criminal cases, but I did ask him a question. And I asked him, "Why did you do this?"

And his response was, "For the thrill of it." I was interested in why he would decide to run drugs when he had such a successful career as a pilot. And that was his response.

My recollection is that they would bring the drugs up from South America in a small plane and fly over the Andes. There was fascinating testimony about how they almost lost the plane in the jungles, how they had trouble breathing when they got up at a certain altitude going over the Andes and had engine problems.

The way they brought the drugs into the United States was to fly across the Gulf of

Mexico at what they called the spray level, which was to bring their plane in so low that the spray from the water from the props would actually come up on the windshield. They did that so they could stay under the detection of the radar screen. Then when they got to where the oil derricks were, they would circle the derricks. When the blip came up on the radar screen, it would appear that it was a helicopter coming off the oil derricks. And then they'd come in and land without any suspicion.

The drugs would be transferred from the small plane onto the jets that they had and then flown to different distribution points in the United States. And one of the distributions was in Las Vegas, and that's how they were arrested here. We had two or three coffin-like Styrofoam containers in the courtroom that were filled with the cocaine.

The defendants were convicted. Shortly after the trial, my understanding is that Barry Seal left the secret protection program. Within a short time after that, before he was to testify in a major drug case in Florida, he was gunned down in a parking lot in Louisiana and killed.

So that was quite an interesting chapter in my tenure on the federal bench and a very fascinating case. There was a movie made of that particular criminal venture, and I think it was called *Double-Crossed*. It was a fascinating trial and it was a fascinating slice of life.

Did the movie cover the trial or just the events?

It mainly covered the events. There was a little bit about the trial, but nothing really that resembled the way the trial was conducted.

I see. It's interesting somehow how judges are portrayed in motion pictures.

Fortunately, they didn't depict me in any particular way in that one. [laughter]

Obviously, you saw lots of cases in 1985. I believe there was a matter that involved the State of Nevada trying to enforce rules regarding the transportation via railroad of low-level nuclear waste into the state. Do you recall this matter coming before you?

That was a case, I think, that involved the interaction of regulations between the two states, between the State of Nevada and one or more other states. I concluded in that case that under the Constitution, when there is an action between and among states, original jurisdiction of that case rests with the United States Supreme Court. So I transferred that action to the United States Supreme Court and they accepted jurisdiction.

I must say that I was relieved that they did. You would hate to misread the Constitution and have the Supreme Court tell you when you're a rookie on the bench that you've misread the Constitution and say, "Why are you transferring that case to us?" There aren't many such actions where the Supreme Court has original jurisdiction but this was one of them, and fortunately, the Supreme Court took the case.

That's nice in a whole range of ways. It gets the case off your docket.

It did. I had decided an important constitutional issue. The case was off my docket, and ultimately it was resolved, I think, through the appointment of a special master by the Supreme Court.

Now, over the years, as I understand it, you have been involved in a Ninth Circuit committee

regarding federal-state court relations. Is that right?

I have. Maybe going back before that one, the Ninth Circuit committee that I was involved with actually was the jury committee, and I chaired the Ninth Circuit Jury Committee for several years. I was involved with it originally when I think it was chaired by Judge Enright of the Southern District of California.

We, during that period of time, worked on the manuals that have been developed over the years for jury instructions, both civil and criminal, for the Ninth Circuit. One of the most significant projects we worked on, starting initially when Judge Enright was chair and later on when I chaired the committee was to develop a jury trial manual for district judges. That was a nuts-and-bolts type of manual on how you deal with recurring jury issues. It was very helpful for trial judges. I think all the judges in the Ninth Circuit have found it to be very helpful. In fact, it's used in other circuits and, to this day, the committee continues to modify and update it. In addition, the two books that we have on civil and criminal jury instructions have been extremely helpful.

It's one of the most interesting and enjoyable committees that we have in the Ninth Circuit.

Who else served with you on that committee besides Judge Enright?

Judge Strand was on the committee at that time. I know when I was chair we had Judge Alice Marie Stotler, Judge Rudy Brewster, Judge Levy and Judge Alarcon. We had a number of really fine judges who made tremendous contributions. That was a very busy committee and we were very active and

it took a great deal of time, but it was very rewarding.

What are some of the common issues that come up with juries, and how do you address them?

Issues about trial management; being able to move the trial along, accommodating the jurors, making sure that they are comfortable, not unduly taking their time, giving them preliminary instructions about what is expected of them. If you have a deadlocked jury, what type of instructions would you give to the jury? If you have to poll the jury, what type of questions do you ask them about, whether or not they have, in fact, reached a unanimous verdict?

We tried to simplify the instructions that we provide to the juries so that they're in lay terms. If it's a complex conspiracy case, for example, how can we make those instructions simple and direct and clear so that jurors will understand them? These are the types of things that we were wrestling with all the time and designing the instructions around clear and intelligible elements for each type of offense or each type of claim in the civil case and the elements of the offenses in the criminal context. These were issues that we would update as the law changed over time.

The federal-state committee that you're talking about is something that I was appointed to by Chief Justice Rehnquist.

Oh, it's very recent.

So it's a recent thing.

I see. Do you want to talk about that?

Oh, I could talk about it. We discussed it briefly earlier. I recall when I received the call

from Ralph Mecham, who was the director of the administrative office of the courts, asking if I'd serve on the Federal-State Jurisdiction Committee. I told him I was delighted to do so and I found it to be a very valuable experience. I served for five years on the committee with the last three as chair.

We discussed issues of common concern among and between state judges and federal judges, particularly in the area of bankruptcy law and the effect that a stay from bankruptcy will have on the processing of cases in either state court or federal court; *habeas* cases; death penalty cases, which have a great impact both in the federal courts and state courts when you have post-conviction writs in federal court to consider, and the impact that it has on a pending death sentence in the state courts, and the remand of those cases to the state court, the preparation of transcripts, all of those are very, very important issues. The question of certification of legal issues to the state supreme court by the federal court; when should that be done? How should it be done? Is it an area generally that will impact the state so much that the state supreme court should decide it if it's a diversity case and have the first opportunity to rule on the issue before the federal court would weigh in on it?

Those are the types of things we looked at, and the sharing of information, the sharing of courtrooms. We, in fact, in Nevada have shared one of our federal courtrooms in Las Vegas for a substantial period of time with the state court when they didn't have any facility for some major construction defect cases. And we've been able to work that out. It's been a really enjoyable experience.

I did mention to Ralph Mecham when he called on behalf of the Chief Justice and said the Chief Justice was going to appoint me to that position, would I accept it, and I said

I would be happy to do so, but I said, “You understand, I’m taking senior status in another three or four months.”

And he said, “Oh, I’m delighted to hear that because you’ll have more time to spend then on the committee.” So that didn’t deter him at all, but I’ve really enjoyed it and we’ve had some wonderful conferences.

One of the things I enjoy most is the interaction that our judges have with the state supreme court justices. We had our first state-federal conference in Nevada when I was chief of our district court. It was a one-day conference with the justices of the Nevada Supreme Court, all the state district judges and all of the federal district judges, magistrate judges, and bankruptcy judges.

We had a full day of discussion on some of these issues that I’m talking about, and it was very healthy discussion and a wonderful interchange. I’m hopeful that they’ll continue that in the years ahead. I think that type of dialogue is very important, a healthy relationship between the state and federal courts. Having been a state district judge and then on the federal bench this was important to me. In fact, the educational conference of the Ninth Circuit is going to have a session on federal-state relationships this January.

Good. Thinking about this state-federal court relationship, in moving from the state court to the federal court, what differences did you see? Obviously, the federal law is different, but . . .

One of the differences, of course, is that you have lifetime tenure on the federal bench, and you don’t have that on the state bench. You have to run for reelection. I was fortunate; I didn’t have an opponent. But there was always the possibility you would, and you had to attend functions and be ready to run a campaign if you had to. You don’t face that. I

don’t think I’ve ever approached a case in the federal court any differently than I did the state court because of the fact that I have lifetime tenure.

It certainly is a relief not to have to go out and collect money from bar organizations or attorneys. That gives you a comfort level that you didn’t have when you were running for reelection on the state bench. I think the framers of the Constitution were very wise when they created lifetime tenure for federal judges and insulated the federal bench from the political process. That is a very important part of the fabric of our government, and I think, over the years, it has proven to be very important that the federal judiciary is insulated from the political process.

As a practical matter, were there different administrative procedures in state court versus federal court, the way the court should govern, the way just sort of the daily work went forward?

As a federal judge, you’re appointed for a lifetime under the Constitution. And while the administrative office of the courts generally governs the courts nationwide, you have a hybrid system. You have the administrative office of the courts giving administrative support and the governance comes from the Judicial Conference of the United States. But you also have, then, the circuit council. It governs the circuits. Then each individual judge, of course, governs his or her own court.

In the state system, we were elected. There wasn’t as much involvement in the administrative process in the state system as there is in the federal system. Although we had some interaction with the supreme court, we didn’t have the interaction, I think, or didn’t have at that time in the state, the interaction that we have with our circuit council and the conferences that we’ve had with the Ninth

Circuit. There was more interaction with the bar associations when we were on the state bench than you have with the Federal Bar Association on the federal bench.

I do find that you're more isolated on the federal bench. When I came on the federal bench I went back for orientation with the Federal Judicial Center [FJC] in Washington. One of the judges there said, "Welcome to the monastery." I didn't know exactly what he meant at the time, but it dawned on me fairly soon thereafter that you are more insulated on the federal bench than you are on the state bench. You're not campaigning. You're not out attending all of the functions that you attended when you were on the state bench, and you don't have the interaction with the members of the bar on the federal bench the way you did on the state bench.

It's probably a good thing in a way because of the lifetime tenure that you have on the federal bench. But I think it's important for federal judges not to lose sight of the fact that they are members of the community and they need be a part of the community. I've attempted to do that over the years and participate in different types of events and activities so that we have a clear understanding of what's going on in the community. Mary Ann and I both enjoy participating in community events. You can't lose sight of that.

The other thing that I was told at the time was that you should always comport yourself on the bench in a way that will bring credit to the bench and I have always tried to do that. I think that's really good advice and, hopefully, I've been able to adhere to that over the years and I've always explained that to my law clerks when they join the chambers.

In fact, one of the things that I show my law clerks when they start their clerkship is the book *The Little Engine That Could*. That

was always one of my favorite books as a child and I thought it had a really important message for me when I was growing up. You can always be successful if you work hard at it and there will be good results if you have an outstanding work ethic. As long as you think you can do something and accomplish it and you put your mind to it, you probably can. So you reach for whatever dreams you have and, hopefully, you'll be able to achieve those. But you shouldn't give up, even though you may have little adversities on the path to whatever it is you're trying to achieve.

It's nice. It's nice. Thinking about that first year on the federal bench and that mountain of cases, did you ever have doubts that you might get through that or not?

Oh, doubts always entered your mind. But as I say, fortunately, I had wonderful colleagues, and with their support and with the type of staff that we had with Carol Fitzgerald, who I thought was a marvelous clerk of the court, we were able to move through those cases.

One of the other interesting cases I had was a case of the sky bandit who was a bank robber. I think this one might have been in 1984. At least it started in 1984, right after I went on the bench. It was called the sky bandit trial or case because Marvin Rogers, who was defending himself in the case, had led a commando-like robbery of the Overton branch of Valley Bank outside of Las Vegas. They robbed the bank by taking a stolen aircraft and flying it into the small town of Overton. They commandeered the airport and tied up three workers and drove to the bank and robbed it of \$114,000.

Because of the unique nature of that set of facts, I had a number of motions on the admission of what we call 404(b) evidence,

which relates to the admissibility of similar acts and conduct in other circumstances, and whether or not it can be used to show intent, absence of mistake, accident, or identity issues. The identity issue was an important issue in this case, and I ruled that prior evidence of similar bank robberies in Louisiana, in which Rogers had been charged, would not be admissible. But evidence of a robbery in a small town in Texas, which Rogers was involved in was admitted in our trial because it was very closely related to the circumstances of our case. There, they flew in on a helicopter and robbed the bank and then flew out; it was very unusual. He ultimately was convicted of the robbery but the circumstances of the robbery were quite unique.

It is fascinating. I'm surprised there hasn't been a movie made of that one.

Exactly.

You had a bankruptcy fraud case against an attorney by the name of Kirby Wells, I think, and this involved taking some testimony from a congressman, now senator, then Congressman Harry Reid. In this particular case, I understand that there was remote testimony. That is to say Congressman Reid was in one place, perhaps Washington, D.C., and he was going to testify in this case, perhaps by telephone. Tell me a little bit about your feelings about using technology of this sort in a trial.

That may have been the first time we used technology to permit someone who was outside the area to appear either through videoconferencing or teleconferencing. I found it to be an extremely useful tool. Obviously, in a criminal case you have to be very careful about the use of such technology because of the right of a defendant to confront

the witnesses. Senator Reid, the attorneys, and I felt the videoconference worked very well.

I frequently hold teleconferences on motions. Many times there will be lawyers from Washington, D.C. or New York, or even, in districts such as ours, between Reno and Las Vegas joined telephonically for the hearing. Rather than incur the expense of the lawyers coming to Reno from distant areas. It's easier and less expensive to hold non-evidentiary hearings, the motion hearings, by telephone, and it's worked very well.

We allocate a certain period of time. It's done on the speaker system in the courtroom so that everyone in the courtroom can hear it. We publish and give notification to the public of the hearing so that the members of the public or the press can be present during the hearing. And if either side requests to be present for that hearing, then I won't go forward unless the other side is there too. It just seems to me you need to keep everything even on the playing field. But it's worked very well.

We have had videoconferences in addition to that, not as often. The videoconferencing has worked quite well in connection with the prisoner litigation. Rather than bringing prisoners in from Ely or Elko, or from Carson City, we simply join them telephonically or by video. And it is of great benefit to the prison officials to not have to transport the prisoners here on cases involving writs of *habeas corpus* or 1983 claims.

Through our *pro se* law clerks a number of years ago in prisoner litigation, we started an early case review of prisoner litigation. We were able to hold an early status conference, and we kind of pioneered this in the Ninth Circuit in our district. It's been used as a model since then in other districts around the country. The prisoner would be joined

telephonically early in the case and often times we could resolve the litigation by discussing claims and parties and sometimes the action itself.

I spoke once at a conference of district judges about the process that we were using here. We were able to use the technology to have this early case conference with the prisoner to identify the critical issues that the prisoner was advancing in the 1983 case. And that was a very, very important tool that we used in helping to facilitate the disposition of those cases.

It's very interesting. You know the old saying "Justice delayed is justice denied." You're speeding up the process . . .

Exactly.

by using new technologies.

And now when we hold all of our judges' meetings that we have several times a year, they are also scheduled through videoconferencing in our judges' conference room. And those judges that are unable to go to Las Vegas if the meeting's being held in Las Vegas or come to Reno if the meeting's in Reno, will join through the videoconferencing. It has worked extremely well and has been very beneficial to the judges. In this state it takes a half a day to travel to Las Vegas and to come back, and so it's been a wonderful tool.

Let me ask you a little bit about one of your colleagues. When you came on the federal bench, Judge Roger Foley was sitting in Las Vegas. Was he senior at that time?

I believe he had just taken senior status. I think Judge George took his position, if I'm not mistaken.

I think you're right about that.

So I believe that Judge Foley had taken senior status about six months before I came on the bench, because Judge George was sworn in about six months before I was sworn in during 1984. I think he was in the spring of 1984 and I was sworn in the fall of 1984.

Did you have much interaction with Judge Foley?

I did.

Tell me about it.

Oh, it was fascinating. He was such an important part of our court. His father had been a United States district judge, and the entire Foley family has done so much for the legal community in Las Vegas and throughout the state. He had a wealth of knowledge and was very kind and fatherly to me in sitting down and discussing the things that had to be done to successfully handle cases in federal court. I recall at my swearing-in, the formal investiture that we had in Las Vegas, that he hoped that I would always be able to judge with a "kind and gentle heart," and I'll always remember those words. He was a wonderful person and judge.

That's a nice phrase, kind and gentle heart.

Right.

I understand that when Judge Foley took senior status, he took issue with the expiration of a law exempting senior federal judges from paying Social Security taxes. As a consequence, he decided he wasn't going to hear any more cases.

My recollection of what happened was that Congress had determined that federal judges who were on senior status should be considered as, in effect, full-time employees, and as such, they were not retired. And since they weren't retired, they wouldn't be eligible to draw Social Security, even though they had a reduced caseload and they were on senior status. Of course, you have lifetime tenure as a judge, and since your salary cannot be reduced during your term in office, which is a lifetime, unless you resign from the bench, you're entitled to receive that salary for the balance of your life.

When Congress decided that senior judges should not be entitled to receive Social Security, it meant that judges, like Judge Foley, who had been working for nothing because they were entitled to that salary whether they worked or not, wrote a letter of protest. I think probably every senior judge in the United States signed that letter to Congress, indicating that if Congress did not repeal that act within a given period of time, that they would all discontinue drawing any cases.

If my memory serves me correctly, within two weeks Congress repealed that act, and so up to the current day then, when you take senior status, you no longer pay into Social Security and you're allowed to draw Social Security. I think the clear message that was given at that time by all of the senior judges is that we shouldn't be penalized because we're working to assist the courts at no additional compensation, and that's basically what was happening.

Congress, I think, in its wisdom, saw the value of what senior judges were doing for this country. Frankly, our system would be in dire straights if senior judges, who, in effect, are not given any additional compensation for what they do, would discontinue working. It's been a very important part of the entire

federal judicial process to have the senior judges. And that was the statement that the senior judges sent to Congress at that time. And Congress blinked, and properly so, and recognized the value of senior judges.

Yes, indeed. Without the contribution of senior judges in districts all over the nation, American citizens and litigants would not be able to get fair and swift hearings of their cases. It seems to me the amount of work that senior judges contribute to the federal courts is enormous, and it's costing the government nothing.

The last figures I saw, I think between twenty and twenty-five percent of all cases handled in the federal courts in the United States are handled by senior judges. Those are judges that have every right to be fully retired and receiving the same compensation, whether they were retired or not. But, because of the love they have for the federal judicial system and for the work that they do as federal judges, they've elected to remain on the bench and draw a substantial caseload. Frankly, that's what I'm doing now and I enjoy it a great deal. I've cut back some on my caseload so that I'll have more time for my wife Mary Ann and my children Mark and Susan and our grandchildren, Elizabeth, Alex, Annabelle, and Zachary. It's a nice balance.

Now, you served as president of the Ninth Circuit District Judges Association.

I was elected as president of the Ninth Circuit District Judges Association by the district judges of the Ninth Circuit at our conference. And as the representative of the Ninth Circuit district judges, I was honored to serve on the Ninth Circuit Council. It

was during a period of time of rapid growth in the Ninth Circuit, and, of course, our primary concern involved issues relating to judgeships and salary, something that never seems to go away . . .

That's a perennial issue.

and working with Congress on those issues. I felt honored to have had that opportunity to serve in that capacity.

Who was chief judge of the Ninth Circuit when you were serving?

It was Judge Wallace, Judge Cliff Wallace, and he also was the chief judge during the period that I served as chair of the Ninth Circuit Jury Committee. Then I served with a number of other people on a national publication on jury techniques and the modernization of jury techniques, and I found that all very interesting.

What was it like to work with Cliff Wallace?

He was a tremendous administrator, very knowledgeable, and I just marveled at his organizational skills and his ability to manage the Ninth Circuit in a very capable way. I also was very impressed with his commitment to other countries and his involvement in the administration of some of the courts in the Pacific Islands and other areas in the Pacific. And he was one of the most energetic people I think I've ever met. He just had an abundance of energy, and I never could quite figure out how he found the time to do everything that he did.

Approximately how long was your tenure?

Three years.

And what does that organization do?

It looks at common problems that the district judges have in the circuit. As I say, the president is the representative of that association to the Ninth Circuit Council, and as a voting member of the council, of course, can express the views of the district judges. The chief judges would meet and, of course, they would provide input to us as representatives to the Ninth Circuit Council. I think that was probably the primary responsibility of the president of that association was to represent the association and the interests of the district judges on the Ninth Circuit Council.

Do you recall what particular issues that the district judges were grappling with at that time?

I think even back then there were issues being raised about the division of the Ninth Circuit and trying to voice some of the concerns on each side of the equation on that issue. We had continuous problems involving judicial vacancies and the need for additional judgeships; particularly for the fast-growing areas such as southern California and Nevada and Arizona. We were at the forefront of trying to secure an ear in Washington so that we could express our concerns about the desperate need that we had for new judgeships.

Those are perennial problems, aren't they?

They are.

Now with Senator Reid in a position of leadership in the majority and Congresswoman Pelosi, maybe we'll get a clear hearing.

They certainly have the interests of the west at heart. Senator Reid has been

so helpful in Nevada with the two new courthouses that we have here, relatively new courthouses; the Lloyd George D. Courthouse in Las Vegas and the Bruce R. Thompson Courthouse in Reno. He also was instrumental in securing additional judgeships, the four new judgeships that we were able to secure in the last ten years in Nevada. I think without his extraordinary efforts, we wouldn't have those judgeships or the courthouses. So, hopefully, he'll be able to continue in those leadership positions and provide the needed judgeships throughout the Ninth Circuit.

Speaking of the split, do you have a position on the Ninth Circuit?

Basically, the judges of Nevada have not taken a formal position on it. I haven't seen any plans that have been developed that I think are any better than what we have in place, and until I'm convinced that the circuit needs to be divided, I'm not a proponent of splitting the circuit. I think there's going to be a point in time in the future where the Ninth Circuit is going to be so large that something's going to have to be done. I don't know that we've reached that point yet. But all of the plans I've seen for dividing the circuit will create a circuit which includes California, which will be so large anyway that I'm not sure a division makes a great deal of sense at this point in time. I haven't taken a formal position one way or the other.

I think it's an issue that we're all involved in and concerned about, but I think it's an issue, basically, that has to be resolved by the Ninth Circuit itself, the judges of the Ninth Circuit. I think it's an issue that will be discussed for some time.

It's a very deeply divisive political issue, unfortunately, and I wish it weren't so. I

probably, at this point, favor retention of the circuit as it is until I see some plan that would suggest to me they're going to solve the problem that they're citing, and that is the large caseload.

One thing that I did notice as I served on the Ninth Circuit Council and in my capacity with the district judges association is that the Ninth Circuit has been very innovative in many of the programs that they've developed. They have created models of governance that have been used by other circuits throughout the country. I think if the circuit hadn't been at the forefront of some of these innovations, then perhaps the calls for dividing the circuit would ring with more resonance. We are functioning fairly well now.

Let's turn to some of the cases that you handled early in your career on the federal bench. One in particular came along fairly early, about two years after you'd come onto the federal bench, and that was a kidnaping case involving a defendant named Sante Kimes.

Yes. Actually, it was interesting because Sante Kimes had spent her early childhood in Carson City, Nevada. She married and moved to Hawaii and had a home in—I think it was in Honolulu. And the allegations and, ultimately, her conviction related to charges that she was harboring some maids who were, in effect, being held against their will at her home. In fact, they were locked in closets and kept there against their will for a substantial period. There was testimony that she, on occasion, would burn them with a hand iron and that they had bruises and marks on their body which reflected abuse.

Ultimately, one of them escaped, and went to the authorities. Sante Kimes was charged with harboring these maids and having kidnapped them and taken them

from, as I recall, the Las Vegas area. And that was the nexus to Nevada. It was alleged she also held them in her home in Las Vegas.

As I recall, her husband entered a plea to lesser charges. She ultimately was convicted of several counts of violating the federal anti-slavery laws and she received the maximum sentence of five years under the statute.

Subsequent to those trials, she was convicted of killing a New York socialite and a California businessman. She is now serving a life sentence.

It certainly sounds that way, and it puzzles me when you get a husband and a wife who are involved in a crime and one pleads out.

Right.

I would think that would kind of be the handwriting on the wall.

The plea agreement was favorable to him so he wouldn't face a substantial prison sentence.

It's a high-profile case. It must have caused a lot of headlines.

It's detailed in a book called *Son of a Grifter* written by one of her sons, Kent Walker.

One of the other early cases that I had involved wild horses. Did I talk about the wild horses?

Oh, no. Tell me about the wild horses. I think you have to explain them, where the wild horses are and . . .

Wild horses roam the open ranges of northern Nevada. They're in other states too, but there are thousands of them in

northern Nevada. The Bureau of Land Management [BLM] had a management plan for the adoption of wild horses. Congress has provided for the adoption of wild horses. It's necessary to control the numbers on the ranges because if they overpopulate the range there is insufficient food and water to sustain the horses and cattle. There has to be a reasonable management program in place.

And they have no real natural predators.

They don't. That's right—the case that we heard, which was back in . . . 1988.

What are you looking at?

This is a copy of *Sports Illustrated*, April 25, 1988. Mohammed Ali is on the cover. Even though I had competed in track and other sports when I was young the only way I ended up in *Sports Illustrated* was through the wild horse case. The article was entitled "Bad Times for Wild Horses." Part of the article related to Bureau of Land Management programs that permitted mass adoption of the wild horses. The horses would be held for slaughter and ultimately slaughtered.

I held in my decision in 1988 that such mass adoption was contrary to the intent of the statute, and ordered the BLM to withhold title from any adopter who expressed an intent to exploit the horses, that is, to sell them for slaughter and bucking stock in rodeos. The BLM had admitted that, on several occasions, it knew before granting title that the adopters intended to slaughter the horses. Basically, what I wrote in the decision, among other things, was that the BLM seemed to believe it was obligated by some unwritten requirement to pass title, even if it knew of an adopter's intent to exploit the horses. I held that such a position defied logic and common sense and

was contrary to legislative intent. The concept of adoption is to have in place a program, which places the horses where they will be nurtured and treated humanely.

As a consequence of that ruling, the BLM revised their regulations and discontinued the mass adoption program. It also devised a system by which a person who was purchasing the horses had to certify that they would not be slaughtering the animals. If they conveyed titles to others, they also had to execute an affidavit that they wouldn't be slaughtering the animals.

Did you get any mail about this?

I did get some mail about that.

Really?

I get mail frequently on cases that involve tax protesters, but I didn't get a lot of mail on that one.

I would think that the animal-rights folks and the environmentalists would be very pleased with your decision in that case.

I think they probably were.

On the other hand, the meat processors probably were not too happy.

I just couldn't understand how they could call it an adoption program, because an adoption program is one that's designed to provide love and affection for the adoptee, and that was just contrary to what was going on in that particular program.

All kinds of interesting cases arise out of Nevada's gaming laws and other situations

that not necessarily would arise in other jurisdictions.

One of the intriguing cases I had was actually when I was on the state bench. The defendants were yo-yoing the slot machines. They would take a quarter and wrap a fishing wire around it. That way they could put it down in the machine and pull it back up and put it back. So they'd only use one quarter until they hit the jackpot.

Because there's a lot of hotels and resorts in the state, the unions are very strong here too. I recall that in 1987, or maybe 1986, the culinary workers went on strike and you had a kind of an involvement in the arbitration.

Right. As I recall, there was a strike for back wages, which I ultimately upheld, and it was a major issue that ultimately resolved the strike. The culinary workers were very strong in Las Vegas and Reno, but principally in Las Vegas during that period of time. I did hold that they were entitled to the back wages.

I think it was about that time that the government uncovered a scheme that had been used by Ben Schmooty and Joseph Cusamano, who were union bosses of the culinary union. They were convicted of conspiracy to skim some \$315,000 from a union life insurance policy in the 1980s. That was a major setback to the culinary union in terms of the fraud involved, and it was quite extensive.

That can be devastating to a union to have the leadership involved in corruption and then subsequently convicted of it.

Yes, and all of that was occurring at about the same time. That's true.

You had another case involving a misapplication in bank funds in a check-kiting scheme, where one of the defendants was a man named Jack Urich [phonetic], and it also involved the Mineral Bank vice president, a Mr. Fenner [phonetic]. You'd better explain who Jerry Tarkanian was.

Yes, he was the basketball coach for the University of Nevada, Las Vegas, and he coached some very talented basketball players. He put together just a wonderful basketball team. They won the NCAA title once and I think came in second the next year. But he had a running battle with the NCAA over regulations and reporting and things of that nature.

The case that I was involved with related to an effort by the legislature of the State of Nevada to adopt certain due-process rules that would apply to any investigation by the NCAA. I ruled that was unconstitutional, that the states didn't have the authority to impose those special rules and procedures on NCAA investigations. That decision ultimately was upheld by the Ninth Circuit and the U.S. Supreme Court denied *cert*. It was a difficult case.

And with the state legislature getting involved to try and change these regulations on a state level, they would have been applied nationally. It's a political problem, as well.

That's right, and it did have some substantial ramifications involving the rights and authority of the NCAA. And of course, this was a challenge to the rights of the NCAA to conduct these investigations. Those who belong to the NCAA sign agreements that they will be bound by the regulations of the NCAA to voluntarily participate in the investigations.

Oh, yes. Have you had any other cases while you've been on the federal bench involving the mafia?

I really didn't. I know Judge George had one that involved the Spilotro brothers. They declared a mistrial part way through the trial and then, before the government was able to retry them, the Spilotros were killed and buried in a cornfield in Indiana, south of Chicago. I was there at the courthouse at the time. The issue that resulted in the mistrial related to alleged jury tampering.

Federal judges are very independent individuals, partly as a result of having lifetime tenure, but partly I think it's a personality kind of thing too. I think the job tends to attract people who are very self-motivated and independent. Thinking about that and thinking about how you do have to work with other judges on your court in the district, do you get together regularly here in Reno and talk about common issues or any things besides court business?

We do. Probably one of the most wonderful aspects of my job has been my good fortune to serve as a district judge in the district of Nevada. My colleagues have been wonderful, not only mentors, but sounding boards on issues that are of common interest to all of us in this district. And the collegial atmosphere in this district has been outstanding.

As I have described before, we have district meetings. We normally have those at least four times a year, where we meet twice in Reno and twice in Las Vegas, and then we also have our district conference. It's a chance for us to get together and talk about common administrative problems we have throughout the district. And on top of that,

we will discuss, generally, legal issues that are of common interest to all of us.

It's just been a pleasure to work with all of my colleagues and I think that's probably been one of the most enjoyable aspects of my work on the bench; to work with the talented and capable people that we have on the bench here. It's just a joy.

When there's a situation such as the jury tampering case or the jury-tampering situation that ultimately ended in the mistrial in Las Vegas under Judge George, do other judges come to you with those kinds of issue to talk about how to deal with them?

We normally will discuss matters like that in a hypothetical setting, not specific advice on any given case. But in terms of the general proposition of law, there are occasions where we'll discuss those issues.

Sometimes being a federal district judge can be a lonely job. It is helpful to be able to consult with other judges you respect in a general context about those issues.

One advantage a circuit judge has is that the judge will be sitting with at least two other circuit judges, and so they have that interchange. As a district judge, you make the call yourself, and other than the advice you may get from law clerks, it can be a little bit lonely. So it is helpful to be able to at least run general issues of law past your colleagues.

I'm sure you've heard the other side of it, too, that sometimes the circuit judges complain that they have to listen to two other people.

[laughs] There is that downside, I guess. I once said that the definition of a circuit judge is a judge who sits high on the hill watching the battle as it unfolds in the valley

below. When the battle is over, the circuit judge slowly steps out from the behind the rock, descends the hill, and shoots all the wounded. And I think I told that once. As a matter of fact, I think I was at a Ninth Circuit conference, and I told that joke. And I'll never forget, Judge Joseph Sneed came up to me afterwards and said, "Judge McKibben, I really enjoyed that story, but at least occasionally, we resurrect the dead." That was funny.

Oh, I love it. I love it. That's great. One of the things that you and your colleagues on the district court in Nevada attempted to do in the 1990s was add some judges to the court to get you some new colleagues, some more colleagues.

Right. We really worked hard in the 1990s, all the way from the early 1990s up through the late part of the 1990s, in securing additional judgeships, and that was during a period when Congress was not approving very many judgeships. They had omnibus bills, but they weren't passing those bills. We went for a period of time when I came on the bench in 1984 until—and I'd have to check the figures on this, but I think it was from 1984 until 1999 before we got new judgeships in Nevada.

We had the two new additional judgeships and we had worked very closely with our congressional representatives. But it was a national issue; it wasn't just focused here. Finally, during the period I served as chief judge, we were able to convince Congress that we needed those judgeships, and with the help of Senator Reid and Senator Bryan and others, we were able to secure those additional judgeships. But up until that point in time, we had eight, nine hundred cases per judge and it was a life change when we got the additional

judgeships here in Nevada. It just made it so much easier for all of us.

I'm sure it must have been. What sorts of steps did you and your colleagues take to encourage Congress to act?

We prepared the studies that established the caseload that we had. We had demographics in terms of how rapidly Nevada was growing in comparison to other states in the Ninth Circuit and other states throughout the country. We compiled that information. We sent it back to our senators and representatives. We enlisted the assistance of the bar associations, and they were very, very supportive in making the case for us, that coupled with the support of the Ninth Circuit Council and others in the Ninth Circuit was very helpful.

They finally recognized the need here and in Arizona and southern California for these additional judgeships, so it was long overdue. We were finally able to prevail and now we have a caseload that's comparable to the caseload of other judges throughout the country as a result of the new judgeships we secured.

Did you and your colleagues work at all with the Chief Justice and the Judicial Conference of the United States?

We did, and the conference was very, very supportive of the position we took on the need for the additional judgeships. I would say, while I was chief judge, the single most important accomplishment that we had in our district was to secure those additional judgeships. Even though we were able to dispose of the cases fairly expeditiously, it was very, very difficult. And once we got the new positions for this district, it made it much easier for the judges to

accomplish a stable calendar without having to have the civil cases wait many, many months to be tried while we devoted our time principally to the criminal cases.

Before you got in the new judgeships in the district, were there any changes in the way that the court used magistrates?

We've always used magistrate judges for the early case management in civil cases and, to some degree, in Las Vegas on the criminal cases. We also have allowed, for many years, the magistrate judges to be on the wheel, and by that I mean that they were able to, if the parties consented, to try civil cases, including a jury trial.

A number of districts in the country do not permit that, but we have a fine cadre of magistrate judges. We have the greatest confidence in them. We always have. All the district judges have great confidence in the magistrate judges' ability to handle these cases, and it's been a very successful program. We've used our magistrate judges, I think, as well as anyone in the country. One other district I think of is Oregon that has a great utilization program for their magistrate judges, similar to what we have here.

And that basically just takes a change in the local rules to . . .

It does. We, by local rules, would provide for magistrate judges, through consent of the parties, to handle the civil cases all the way through trial.

In 1989, the United States celebrated the bicentennial of the judiciary.

Right.

And you played a role here in Nevada in that.

We did. We had a mock trial and it was a trial that involved a celebration of the bicentennial of the Constitution. We had students from the various schools here in our courtroom. As I recall, we had a video hookup with Washington in connection with the programs that they had there, and it was very successful.

One of the things I've enjoyed a great deal, both when I was on the state bench and on the federal bench, is to have students from high schools and from the elementary schools come over to the courtroom, and I'll speak with them about issues of law and the legal process.

In addition, we have mock trials and, matter of fact, they're going to be conducting some here toward the end of March and first part of April. They're also going to have the state competition here. It's really enjoyable to preside over those cases and watch the young students get enthused about the law. They are very talented.

One thing that I have always stressed with my law clerks is that—and I do this when I bring the classes over from the elementary schools, and I actually go to the elementary schools and talk with young people—is how important it is to have young people in our society understand our system of justice, understand what lawyers do, understand what judges do. I think it has a wonderful ripple effect in terms of their confidence in the judicial system in the future.

Whenever I talk with the elementary students, I talk about the book I mentioned before that I enjoyed when I was young. It's called *The Little Engine that Could*. As a matter of fact, I have a copy of the book over here. Through perseverance and

commitment and energy and being goal directed, you can actually achieve things that you think you can't.

When you couple that with the robe and the gavel and wig that I show the young students, I think it has a positive impact on the feelings that they have about the judiciary and our system of justice. I encourage my colleagues and everyone to engage in that type of activity because I think it's a very positive thing for the judiciary and for the legal community as a whole. And it is a great deal of fun. I recall on one occasion when I was visiting a kindergarten class, I asked the students if they knew the President who appointed me. One student asked, "Was it President George Washington?" I smiled and said I wasn't quite that old. Then a girl raised her hand and said, "Was it Abraham Lincoln?" I smiled again and said no but you are getting warmer and I am getting younger.

There was another trial reenactment, not just a mock trial, but a trial reenactment that you participated in down in Genoa.

Oh yes. That was the hanging tree, was it?

Curse of the hanging tree.

The curse of the hanging tree, right. It involved a brawl and a killing in the Genoa Bar, which is the oldest bar in Nevada, in Genoa. And within a two-day period, the defendant was tried and convicted and hanged at the hanging tree, which still stands in front of the old courthouse in Genoa. I played two parts. I participated twice. Once I was the judge during the trial, and the second time, I was the defendant and they hanged me on a limb of the tree. I was hoping that

they had it rigged properly and fortunately they did. But I was apprehensive until it was over.

They actually went through . . .

They actually have you there . . .

the action?

Yes, you're on a horse, and then the horse leaves and you come down.

My robe, a robe that I used when I was on the state bench, still adorns the judge that you see at the museum at the old courthouse in Genoa.

Oh, really? [laughs]

So if you're ever there, you can go in and see it.

I've been there not so long . . . in fact, I think the last trip I was up here, I went by there.

I haven't been there for a long time, but I assume the judge is still there. And if so, that robe is my robe. [laughs]

The mannequin? Oh, my goodness. I had no idea. That's interesting. And Nevada Supreme Court Justice Noel Manoukian was involved in that too.

That's right. He was. Right. He served as a judge several years, too, and I think the year that I was convicted of that crime, Noel Manoukian, former justice of the supreme court, was the presiding judge.

Is this something they do every year, this reenactment?

They have done it, or at least during that period of time, they were doing it every year. Whether they still do it or not, I'm not sure. I know every so often they do have that reenactment.

My goodness. So what's it like to be on the wrong end of the noose? [laughs]

I do not want to do it again, I'll say that. [laughter]

Let's see. It was in 2000 that the Lloyd George Courthouse opened in—what was the year? One of the other significant things that we did administratively here was work on the development of the design for the Bruce R. Thompson Courthouse here in Reno. I don't know if I spoke about that or not.

No, why don't you talk a little bit about that.

Yes. I was going to go back here just for a second and see if I can see when we opened. I think we've been in here about eleven years.

Opened in 1996.

Ninety-six, during the early and mid part of the 1990s and for some time prior to that, we knew we needed a new courthouse in Reno, and the question was whether we would expand the existing courthouse on Booth Street or find another site. And I know all of the judges of our court, particularly Judge Hug and Judge Brunetti of the Ninth Circuit, were very helpful to our court, along with our congressional representatives, in securing a site downtown. This was going to be a core area for redevelopment of the downtown.

Ultimately, the decision was made by the General Services Administration, GSA, to move the courthouse from the Booth Street

location to the downtown location. Then we worked with the design people. If you see our courtroom, you'll see that inside we have some globes that hang down. They give the courtrooms an antique appearance, even though the wood and the courtrooms are somewhat modern.

We've really enjoyed this courthouse. It's been very functional. I think it's a beautifully designed courthouse and it has served the needs of our court, the bar, and the public here very well. We're reaching the point now where, if we had an additional judgeship, we wouldn't have courtrooms for them. And even though this design was supposed to take care of the needs of our court for the next twenty years, it looks like it's going to fall short by about ten years because of the need for additional space for other judges when Judge Hicks, for example, goes senior. If Judge Hagen had stayed with our court—he retired a year and a half ago, but if he had stayed with our court, we wouldn't have had space for that additional judge. So within a ten-year period, we're practically out of room here, and at some point they'll have to build an annex to this building. We're already starting to talk about what should be done on that.

Then, of course, while I was chief judge in 2000, we opened the Lloyd George U.S. Courthouse in Las Vegas. So within a period of four years, we had two new courthouses, one in Las Vegas and one in Reno, which is really quite extraordinary if someone understands how difficult it is to build these courthouses. And again, that was through the extraordinary efforts of our congressional delegation.

It's a very long and time-consuming process.

It is. From the time that you start the initial request, it can take as many as ten

or twelve years before you secure all of the approvals and construction is completed, and that's if you are on a relatively fast track.

Yes, I think the judges in the Central District of California are well aware of this issue.

And the costs just escalate at a very rapid pace if you aren't able to build out. By the time that you're ready to get bids, the cost may be almost prohibitive and you have to go back and redesign. That's what they're finding out in the Central District of California. I think they're talking in terms of—what is it, almost a billion dollars for that building now? It's incredible.

Something like that. It's unbelievable. Was there a particular judge or judges from the court that were assigned the responsibility of overseeing the designs of these courthouses?

I was the chief judge during the period of the design work and construction of the Lloyd George Courthouse in Las Vegas. And of course, Judge George, after whom the building was named, was intimately involved in everything from the initial development of the prospectus and the development of the plans and what have you. Judge Pro was also quite involved in that whole process, and I was involved. I was much more intimately involved in the oversight of the development of the courthouse here in Reno, and during that period of time, Judge Reed, Judge Hug, Judge Brunetti, and Judge Hagen, to some degree, were involved in all of the work and the oversight responsibility of the courthouse here.

I have a historical question for you and I don't know whether you'll know the answer or not. I don't, and that's why I'm going to ask the

question. It was the practice for the federal government for many years, from the late nineteenth century through really up until about World War II, when they built a federal building in a town like Reno or Carson City or some other town, the building would be an all-purpose building. Primarily, it would be a post office with a courtroom upstairs.

Right. They had that in Las Vegas and they also had it in Carson City.

Was that ever the case here that you know of, in Reno?

Not in Reno, because the court moved from Carson City to the courthouse on Booth Street. Before that, the federal courthouse was situated in Carson City. I know Judge Ross presided for many years there as the only federal judge in the northern part of the state and that's where his courtroom was located.

I see. So that beautiful post office down the street has always been a post office and never a courthouse?

To the best of my knowledge, I don't think it's ever been a courthouse.

I was just curious. I was just curious. Let's turn back . . . Coming back to federal crimes and cases. In 1994, tell me if you remember this case. It involved a San Francisco attorney, Patrick Hallinan, who was accused of money laundering on behalf of a drug smuggler. Does this ring any bells?

It does. It was a major case that we handled here. There had been a companion case earlier. Cyril Mancuso, who was one of the persons involved in the drug conspiracy, and that case had been tried before Judge

Reed. The case that I had involved Cyril Mancuso's attorney, Patrick Hallinan, who was a prominent attorney in the Bay Area. He had been charged with money laundering for Cyril Mancuso, who was, at that time, a Lake Tahoe developer who had been involved in the drug smuggling.

Ultimately, the case did go to a jury. I dismissed some of the charges, but the remaining charges went to the jury and the jury didn't deliberate too long. They found Mr. Hallinan not guilty.

It was a very difficult case. It was a difficult case to try. John Kecker was the attorney for Patrick Hallinan. He also had been the attorney for Oliver North and was one of the most capable attorneys I think I've ever seen in the courtroom in the criminal context. His offices are in San Francisco.

What made him good, do you think?

He had a wonderful ability to retain facts. He could present very persuasive arguments to the jury. He was just exceptionally skillful in cross-examining witnesses. That's one of the enjoyable aspects of being a federal judge, you see lawyers from not only this state, but across the country.

The other attorney that I can think of that would be in that category would be Albert Kreiger, who appeared before me in Las Vegas. Those two attorneys are the two from the outside the area who are exceptional defense attorneys.

That's very interesting. I want to ask you about one last case today, and it involves a trademark infringement of a group that called themselves the Flying Elvises. Do you recall this?

I do. They would jump out of helicopters. They dressed up like Elvis. They didn't have

the right to the trademark, so I ultimately enjoined them from engaging in that activity. But we had photographs of them and some of them looked just like Elvis but most of them didn't really do justice to the clothes that they were wearing.

One remark you made, in discussing some of the things that happened while you were chief judge, was that you felt that the single most important accomplishment for you as chief judge in the district of Nevada was acquiring two new judgeships.

I think that's right. Up until that point in time, we had one of the largest, if not the largest, caseload per judge in the country. I think we were second in the country. Each of our judges was carrying approximately seven hundred cases, which was more than twice the national average. We had felt, prior to that time, when Judge George was chief judge and then when I became chief judge, that one of the critical things that we needed to do administratively was to work with our congressional delegation and try to secure additional judgeships for Nevada.

Statistically, we all knew that we needed the judges. It was just a question of when Congress, and Congress rather sparingly passes these omnibus bills that create new judgeships, would recognize the need and provide the assistance. All of our representatives, Senator Reid and Senator Bryan at the time, and the others, were very cooperative, and, ultimately, I think it was a testament to their concerns about our district that we were able to get that legislation passed and secure the new judgeships. And that helped tremendously.

Ultimately, we had, I think, three new judgeships, and with the addition of those judges, our caseload, while it was still substantially above the national average, was

something that was more manageable. We were very fortunate to have our congressional representatives working hard with us.

I can still remember discussions that I had on the telephone with Senator Reid. It was coming right down to the wire in terms of justifying those judgeships. I took a number of calls from his staff, and once I remember talking with his staff and with him when I was over in Sacramento and they were putting the final touches on the bill. We went right down to the wire. But fortunately, we obtained those judgeships and it certainly was a healthy thing for our district.

Who did you succeed as chief judge?

Judge George.

Judge Lloyd George.

He left everything in wonderful shape for me. He had interests in budgetary matters, like I did. Some of my early training had been in program performance budgeting when I was securing a master's degree in public administration and working in Saginaw, Michigan. I was very aware of the budgetary needs that we had for our district and was quite involved in the construction of the Lloyd D. George Courthouse in Las Vegas, which was another wonderful accomplishment for our district, to have the two buildings, the Bruce R. Thompson Courthouse in Reno and the one in Las Vegas. When you look at other districts, we've been very fortunate to have these new facilities and they've served us very well.

Judge George left everything in really wonderful condition for me. It was an easy transition, and working with all of our judges made it very easy, because we have a very collegial group of judges, always have. Never

had any real difficulties. They were wonderful in terms of letting me make many of the decisions that had to be made except for the major policy decisions. I made certain that all those issues went to all the judges so they could pass on the policy questions. That was my management style to try and not bother them with the details and the minor things, but to take all the major policy decisions to them in terms of budget, personnel case management, and other major issues.

Sometimes being a chief judge, at least the stories I've heard in other districts, reminds you of being—and I don't know if I mentioned this earlier—reminds you of being a caretaker in a cemetery. You're over a lot of people, but nobody's listening. Fortunately, my colleagues here in this district listened, I think, very well and they were very responsive and they made wonderful contributions, so it made my job just an incredibly easy job.

It sounds like an easy transition.

It was. It really was. I found that I would devote an hour, or sometimes two hours, a day to administrative matters, whether it was working with the budget, working with personnel, planning the programs that we were going to have, working on the district conference. I immersed myself into all of these issues. So it did take from your courtroom responsibilities and required extra hours, but I found it very rewarding.

Describe briefly for me, if you would, what program performance budgeting is.

That's where you try to identify the programs that you think are most essential for your district or for your state or for your community. Then, by identifying those programs that are most critical to your district, you try to funnel as much of the assets that you have into developing those programs

as priorities. It's much harder to do that in the judicial context than it is, for example, in a city. In a city you can quantify programs, whether they're parks and recreation, or traffic or other programs. Trying to adapt that to our system was relatively difficult because about eighty-five to ninety percent of our budget is personnel and the judges have set routines. Their program is set because it's dispensing justice and handling the cases that come before us. We had limited capability of developing programs.

An example would be to ask the judges how much they want to spend on technology. That would be an identifiable program. Find out what are the new trends in technology and how much money we want to allocate to that versus educational programs and things of that nature. We did have some discretionary spending within the system if you set aside the personnel aspect of it. We tried to quantify those things as best we could so that the judges could make choices on what was most important to operate the courts.

How much local control is there in a district court with respect to the budget?

Some years ago, before I became chief judge, the administrative office approved a decentralized program, where X amount of money is allocated to the districts. I found that very beneficial. Prior to that time, a great deal of the funding was controlled by Washington in the administrative office. This way we could help define our own programs and determine how much money would be spent on these programs. That's why, with the type of funding that we had, we were able to sit down and develop these goals and then allocate monies to accomplish the objectives that we developed.

We still had certain things that we had to look to Washington for in connection with choices between developing our own, say, technology program or going to the one that was being developed on a national basis. Ultimately, we elected to go on the national system with electronic filing and case management. But that was a policy decision that the court had to make, and I think they made the right decision on that. There were programs like that which we tried to develop over the years, and fortunately, we didn't have a lot of internal controversies over those matters.

Besides e-filing and that kind of thing, do you recall what other policy issues that you took to your colleagues on the court as a whole?

We had to discuss chambers, staffing requirements. We had to discuss questions involving the development of long-range planning for our district. When Judge George was the chief judge, he assigned me as chair of long-range planning. We developed a long-range plan for our district that projected out how many judges we'd need, depending upon the population of the state and what we anticipated would be the caseload, and what we would need in order to accommodate that in terms of number of judges and space.

Space and facilities have always been a major problem in this district and other districts. One of the things we had to try to determine was how many chambers we were going to need in the future for senior judges. How do we plan for that now because those facilities aren't going to be constructed for at least ten years? We were projecting into the future like that.

That consumed a great deal of our time when we were constructing the Lloyd D. George Courthouse in Las Vegas, the space

there and the fact that we had to allocate room where the U.S. Attorney's office is. We knew from about the year 2011 forward, that we were going to have six judges take senior status within a three-year period. That's almost unheard of. How do you accommodate those senior judges and accommodate the new judges that are going to be coming on board? We started projecting that out when I was chief judge and trying to secure space to accommodate the judges in Las Vegas and Reno. We tried to see if GSA would acquire property next to the building here so that we'd be able to expand here when we needed to. Unfortunately, GSA had a policy that they couldn't buy property until they actually had the need. It would have been a good opportunity to buy at low prices, but it was contrary to their policy. Those were the issues we were dealing with.

In conducting this long-range planning, was this all done internally with the court or did you bring in outside experts to help you?

We brought in outside experts from—well, one outside expert from Washington, who was with the administrative office of the courts in their long-range planning division. He was very helpful to our whole process.

We had a number of meetings and then we developed the long-range plan for the district of Nevada. I think we probably developed that in the early part of the 1990s, and we'd brush it off every so often and take a look at it. And like many districts, if they do have a long-range plan, or the circuit, if it has a long-range plan, we look to it as a guide. But sometimes perhaps we're not as faithful in following it as we should be.

A lot of what you put in a long-range plan is educated guesswork. It contains general concepts of what you want to do and what

your mission is and the objectives that you have. But in the area of the judiciary, it's much harder to define what your goals are, other than to dispense justice and to provide a forum for the fair and efficient and effective and impartial resolution of disputes. That makes long-range planning more difficult, I think, in the judiciary than in some other fields.

Did you take into account the tremendous population growth that's been occurring in the state?

We did. We knew that was going to be a major problem. If you look at some of the southwestern states, Arizona, and Nevada have been just exploding population-wise. And not only that, we knew that there were going to be immigration cases. Illegal reentry cases dominate our docket now, which they didn't ten, fifteen years ago. That has an impact on how you allocate your time and resources. It has an impact on pretrial services and on probation. And of course, we were responsible for all of those offices, and that was quite a challenge for us. But I have to say, with the addition of the new judges and the space and facilities that we have available now, I think all of our judges have been equal to the task.

Is there a method for projecting caseload increase based on the demographics of a particular region?

Right, and we've used statistics out of Washington to give us a barometer on that. We're separated geographically by almost five hundred miles between Las Vegas and Reno. Our judges have faithfully, over the years, equally divided the caseload, the criminal and civil caseload, among all the judges. And if

that means judges from Reno periodically go to Las Vegas to hear cases to take a portion of the caseload in Las Vegas, that's what we do.

One other thing that we have done faithfully over the years, and I was very keen on this as a chief judge, was to maintain the balance of parity among the judges. Periodically, whether it was every year or every couple of years, maybe even every six months, we'd review the caseload statistics. If it looked like there was an imbalance and one judge was falling behind for whatever reasons, it could have been in a protracted trial that lasted six or eight months, then we would redistribute the cases on a fair basis so that we continued to keep, within fairly narrow parameters, an equal balance of cases among all the judges. That way it didn't end up that one judge had three hundred cases; another judge had one hundred cases. I suppose that penalized a judge that was very efficient, but in our case, it really wasn't a problem because all of our judges have been very conscientious, and it made it fairly easy. And when we did redistribute, we didn't have to redistribute that many cases. But we try to keep those in balance, so we would look at that all the time. I thought that was important.

What was the biggest change that you experienced in your professional work on becoming chief judge?

I think it was just the balance that you had to draw and the time constraints. I would meet with the clerk of our court, Lance Wilson, who did an excellent job and continues to do an excellent job for us. We would have discussions maybe for a half an hour, forty-five minutes almost every morning. You had to sandwich those in among your trials. Then we would have a number of meetings on both personnel matters. You don't realize

until you become chief judge that there are a lot of personnel matters you have to deal with. I tried to deal with those as much as I could without involving the other judges, unless it was absolutely necessary. I think they were delighted that I did that. But those were very time-consuming. So I would say probably balancing your time was the most challenging thing for me.

In some districts, it might be being able to secure a concurrence and a consensus among the judges, but I didn't have any problem with that. My main concern was how do you balance continuing to take a full caseload, which I did—I didn't diminish my caseload, and be able to do the administrative things. The one perk that we did get was an extra law clerk. I was happy to have that, but I really didn't assign my law clerk to too many of the administrative issues. I basically handled that.

Then you have the additional responsibilities of representing the district and giving talks and appearing at functions and what have you. I thought that was important to carry the message of the court to the community, wherever it may be, and the schools and other places in the community so the public, and not just the bar, would have an understanding and appreciation of our system of justice and our court.

When you became chief judge, was there a committee structure for the court?

There was. Judge George had developed some committees. I expanded that. I expanded the number of meetings of the court that we had a year, I think, from two to four. We alternated those meetings between Las Vegas and Reno. They were held in a fashion similar to what Judge George had done. We would receive reports from the heads of all the departments and then the judges would meet separately

to discuss issues of common concern for the district. I designated various judges of our court to chair these. They were committees on case management, the budget, and technology. I chaired the budget committee. We had a committee on security, which Judge George was assigned to chair.

I found case management and the case management committee to be very important, because we were always trying to implement new programs in the district that would assist judges in handling their cases more effectively and efficiently. I recall a number of years ago we developed, which was, I know, a model nationally, at least as far as the administrative office was concerned or the FJC was concerned, for triage hearings in prisoner cases. We would have early case review of those cases. The prisoner was present telephonically, the attorney general was present, and the judge was present. We would go over the complaint. If it contained multiple parties and multiple claims, we tried to streamline that and dismiss as many parties and claims as could be eliminated early on so that the case became much more manageable. It was early case review by the judge, and that really helped on the huge backlog of prisoner cases that we had.

In fact, now there is a committee in our district that's looking at that old model that we had, trying to re-institute some of those concepts and develop some new techniques. We still, in our district and elsewhere, face a substantial number of these *pro se* cases, both prisoner and non-prisoner *pro se* cases. It's a large percentage of cases. We were able to get a lot of the backlog of cases out when we did the triage hearings and I'm hopeful that will occur again.

That leads me to ask you about on the civil side, the district's procedures for case settlement and case conferencing.

Right. One of the things that all of our judges, all of our district judges have been very clear about is that we have great confidence in the magistrate judges in our district. We have assigned considerable responsibilities to the magistrate judges, including settlement conferences. In fact, even though our magistrate judges are not on the wheel, we have a consent form that's given to all the parties in civil cases. They can consent to have the case heard and decided by a magistrate judge. We have a number of consents that are entered into by the parties. That has relieved some of the caseload of the district judges. We particularly are grateful for that when we have a large number of criminal cases, which can't be assigned, other than pretrial matters, to the magistrate judges. Dispositive motions would still have to come to the district judge, as well as the trial, in criminal cases, but they've been very helpful on the consent cases. They've been helpful on pretrial matters, and we utilize our magistrate judges to the maximum extent and consider them to be a very vital part of our court.

You mentioned that the magistrate judges are not on the wheel.

What I mean by that is they don't actually take a draw of civil cases. I think the district of Oregon may do that, or at least I know they have in the past. We've given some consideration to that, but we think the consent system that we have in place works quite effectively. It does give some option to the bar in making the decision whether or not to have a magistrate judge or the district judge hear the case.

Now, the district judge, of course, could, even if the parties consent, decide to retain the case. But, by and large, if there has been a consent, then it will be referred to the

magistrate judge to try the entire proceeding. And by wheel, it means they simply are on the draw, given a percentage of cases, and they consider them just as the district judge would.

I see. Now, before you became chief judge, you served on a number of Ninth Circuit committees and task forces.

Right.

Were there any special committees that you served on as a consequence of becoming chief judge?

I don't think that I served on any particular committees. I do know that I would attend the conferences of chief judges, and I think I already spoke about the jury committee?

Yes, you did.

I think we talked about all those earlier. It was right after I had taken senior status that I got the call that Chief Justice Rehnquist wanted me to serve on the Federal-State Jurisdiction Committee, and, ultimately, chair that committee. I just retired from here that committee last year. I found the work fascinating. It was a tremendous amount of work, but there was a tremendous degree of satisfaction from working on that committee too.

Tell me a little bit more about that, about the Federal-State. . . .

It was a nice fit for me because I had served as a state judge, as you know. And then, having been on the federal bench, I had a perspective from both sides. So when the chief justice asked if I would first serve on the Federal-State Jurisdiction Committee,

and after having served for a year, asked if I would chair the committee, I was delighted to do so and I served on that committee for four years.

We had four chief justices from around the country on that committee. We had four district judges. We had four circuit judges. We had a magistrate judge and a bankruptcy judge. So we had a great cross-representation of both the federal and state systems. I had an opportunity twice a year to attend the Conference of Chief Justices. In turn, they had an opportunity to provide considerable input to us on matters that affected federal-state relationships, and I had served for some time on our federal-state committee here internally and was very actively involved in that.

Examples of things we did: I testified before the Senate Judiciary Committee on reforms to the *habeas corpus* laws. The legislation was designed to try to streamline and expedite the process of resolving the *habeas* cases. Some of those cases can take a considerable period of time in the federal court.

The theory behind the Powell Commission recommendation a number of years ago in streamlining the *habeas* field and the Antiterrorism and Effective Death Penalty Act was to enable one fair and full hearing of a state death penalty conviction. From time to time we'd get mired down in a lot of procedural issues involving those cases. The case would be remanded to state court. Then it can be in state court for many, many years. Some of those cases are ten, fifteen years old, and Congress was concerned about that. And I had to respond to those questions when I appeared before the Judiciary Committee.

As a result of that, the conference is looking at ways in which we can streamline the process for considering those cases, which will tie in with case management. That's an

ongoing process, but it was one of the things that was of interest to state judges, as well as the federal judges. When the case is remanded to the state court, the federal court stays the action. We therefore have a keen interest in having it resolved as timely as possible and have records available from the state court that can be transferred to the federal court expeditiously. So there was a lot of that give and take.

We considered issues involving whether federal judges should serve on state juries and whether state judges should serve on federal juries. Under existing federal law, state judges are exempt from service on federal juries. I didn't know that until I was on this committee and that issue arose. But federal judges are called from time to time to serve on state juries. The question was should there be some reciprocity there, and we were able to resolve that without additional legislation, just with the interchange that we had with the state judges.

But these were issues that were common to both the state and the federal courts, and that's why I found it so fascinating. It was just a wonderful experience.

It was a tremendous amount of work. Maybe twenty to thirty percent of my time would be spent on matters that involved the committee when we were going back to the judicial conference and I had to make statements at the conference, or when we were going before Congress and I testified on Social Security. That was another major issue that arose involving the changes in Social Security. The proposed legislation would have eliminated the appeals council and could have resulted in an additional 60,000 cases a year coming into the federal courts. We were able to convince the Commissioner of Social Security ultimately that the right to a review administratively should not be eliminated

before a case came into federal court. We were successful, and the state judges were also interested in that because it would have some effect on caseload, generally, with the administrative judges in the state process. It was a wonderful experience for me during that period of time. I enjoyed it a great deal.

That sounds really interesting, especially given your personal background.

Right. They had the national conference in Florida a number of years ago, and then they've had two western regional conferences on state-federal relationships. Both Nevada and California have continued to have very strong internal state-federal councils that are staffed. We receive a considerable amount of assistance, fortunately, from the circuit in connection with those councils.

Speaking of the circuit and speaking nationally about the federal judiciary, about this time or, if I'm not mistaken, during the period you were chief judge, there was a review of local rules throughout the district courts to see if they were in compliance with federal legislation. Do you recall that review?

I do recall it. That was assigned to our rules committee. We were constantly vigilant to make sure that our local rules were in conformity with the federal rules, and to ensure that our specialized rules didn't violate the federal rules in some way. So we had a complete and comprehensive review of all our local rules to make sure they were in compliance with the fairly substantial changes that were made in the federal rules.

Our judges were very concerned about delay in the disposition of cases. We wanted to be certain that our local rules had reasonable limitations on discovery, whether it related

to the number of interrogatories, the length of depositions, and how you can incorporate that into the trial process.

We were constantly looking for ways that we would assure that the cost of litigation wouldn't escalate beyond reason and that time constraints could be managed effectively. We were always aware that this had to be accomplished within a reasonable scale and with a fair balance.

When it came time for you to step down as chief, how did you decide that it was time?

I had pretty much pre-planned that, because you can project out. You don't become chief because you're the wisest among wise people. You become chief because the statute states that your time is now because of your age and your years of service. It's based strictly on seniority, and that takes a lot of the mystery out of it. And when you project out with the other judges on your court, you can see whether or not they will become chief if the current chief serves the full seven years. You're allowed to be chief judge for seven years and I could have served for seven years, but I projected out that if I served my full seven years and then if Judge Pro, who was going to succeed me, served seven years, Judge Hunt, a very capable judge on our court, could not become chief judge because of his age.

Because he would have exceeded. . . .

You have to become chief judge before you turn sixty-five and you cannot serve as chief judge after you're seventy, and you can only serve for seven years. Those are the conditions. I felt if I served for five years and if Judge Pro served for approximately five years or a little bit more, then Judge Hunt could

still serve as chief judge. And that's what was accomplished. I thought it was the fair thing to do because I think everyone should have an opportunity who possibly can to serve as chief judge. I think five years is about right. It was right for me. I enjoyed it, but I think it's nice to share these things and to bring other perspectives to the position and the court. I didn't have any regrets at all when I stepped down as the chief.

I wanted to ask you about a case you had—I believe it was in 1998—about a defendant named Alvero Calambro, who was accused of the murder of two U-Haul workers in Reno.

Right. That was one of the cases that was what would be described as a volunteer case, in which Mr. Calambro indicated that he wanted to forego all of his appellate rights and any rights that he would have for *habeas* review after his conviction of capital murder in state court. Of course, a petition was filed on his behalf here in federal court. When the defendant in a case such as this declines to proceed, a “next friend” could file a petition on his behalf. But in order for the “next friend” to have standing to proceed, the court must decide whether or not the defendant is competent to waive his rights to file a *habeas* petition or to seek further appellate review.

I conducted a hearing on that. Before I did so, however, I appointed a psychiatrist to examine the defendant and provide a report to the court on whether or not the defendant knew what he was doing, that he could form a rational decision as to whether or not he competently was waiving his rights to any type of review, and whether he understood the consequences of it, which would be the imposition of the death penalty imposed by the state court.

I secured that report and then we conducted a hearing on the competency issue. After that hearing, I concluded that he was competent to make an informed decision, that he understood what the consequences were. I examined him at great length and I concluded that he was competent, and so I denied the petition, which had been filed on his behalf by, I believe it was a relative of his. As a consequence, the death penalty was imposed and he was executed.

Difficult case.

Death penalty cases are very difficult. I have elected, as a senior judge, to decline to hear death penalty cases. That's the only type of case on the wheel that I'm not taking anymore.

A different sort of case occurred about the same time, very high profile, involving a man, a defendant by the name of Joe Conforte and his establishment known as the Mustang Ranch.

He was named in a criminal complaint. AGE Corporation and Shirley Colletti were the defendants actually tried on the indictment. Mr. Conforte was a fugitive on another case and had been out of the country for many years. He didn't appear in connection with the trial. He wasn't tried in *absentia*, but the other two were tried in connection with the charges involving the use of monies through the Mustang Ranch.

Ultimately, the Internal Revenue Service seized the Mustang Ranch and then, in proceedings before this court, I ordered the closure of the Mustang Ranch. It ultimately was sold. As I recall, there was an application made by the Internal Revenue Service to operate the ranch for a period of time. I

rejected that request, believing that was not the appropriate thing for the federal government to be doing. I didn't think it was an appropriate way for the IRS to be generating income to pay off the debt, so I didn't permit them to operate the business and they ended up selling it.

Just to be clear, the Mustang Ranch was a legal brothel in. . . .

That's right.

Was it Storey County?

Yes, Storey County.

Right. And was this a tax-evasion case or a money-laundering case?

The case involved the payment of taxes by these individuals and how they structured those payments. Again, what I will do, though, is go back and actually pull a little more information about that for the next time that we talk. I'll make a note to be sure to do that.

My notes indicate that there was possible juror misconduct in this matter. We can clarify that, I guess.

Yes, there was an issue that arose afterwards that one of the jurors actually knew one of the people involved in the case and the juror hadn't disclosed it at the time that she was selected on the jury. I conducted one of those rare post trial hearings where I asked the juror afterwards whether or not she had been influenced in any way by virtue of this relationship and also questioned the other jurors. The juror said that she had failed to make that disclosure and it was unintentional

and that it didn't affect her decision and hadn't impacted anybody else.

I concluded that it was not something that affected the trial in any way. That case ultimately was affirmed on appeal. I've only had maybe four or five cases where I've actually called jurors back to court to determine whether some external influence tainted the jury process. If it's external to the jury process, then we can consider that. If it's something internal to the process, you can't.

For example, there's a Supreme Court case where the jurors had marijuana in the jury room during deliberations. The Supreme Court held that was internal to the process and, therefore, you couldn't impeach the verdict. But if, for example, the jurors went out and independently secured information about the evidence in the trial and brought that back or had access to that, that is external to the process and is called extrinsic evidence. That conduct could well be a basis for granting a new trial.

Interesting. Very interesting. And an interesting procedural case occurred in your district in 1999 involving criminal aliens who had been ordered deported, and the issue, I guess, was whether or not they could be kept indefinitely in jail if their native country refused to accept them.

That was a case our court felt was significant enough that we should hold an *en banc* hearing with all of our judges sitting. The Reno judges were in court here. The Las Vegas judges were in court in Las Vegas. We had a video connection and we decided that case *en banc*. It's the only time that I'm aware of that this court has ever sat *en banc* to decide a case.

There were several similar cases on file. Each judge had a number of these cases, and

there was a timing issue involved. We had to decide these cases quickly. We felt the most expeditious way to deal with that would be to have all the judges hear the common issues and then render an opinion as quickly as possible, and that's what we did. I think the decision came out within a week of our *en banc* hearing. That decision was affirmed by the court of appeals.

I don't think it's a procedure that we'd follow often. I think it would have to be limited to that very unusual case where timing was critical, where a number of the judges had identical issues in cases that impacted a fairly substantial portion of our calendar, and that the most judicious way to deal with it would be to have all the judges sit *en banc* to consider it. We concluded that we could do so, but it wasn't challenged. And so I think we would use that procedure sparingly. So far we haven't had a similar *en banc* hearing.

So thinking about this procedurally, the litigants presented their arguments before the judges, some of whom were here in Reno, some who were in Las Vegas.

Right.

Was there testimony taken at the time?

No, it was strictly oral argument, which made it easy.

And then when that was over, did the district judges meet in conference?

We met in conference and assigned two of the judges to circulate an opinion. Ultimately, we were able to craft an opinion that all the judges signed.

It's fascinating.

It was.

Unusual. I have a note here about a case that happened in 2000, moving on, involving an African-American police officer from Sparks. His name was Melvin Gentry, I believe.

And that was a discrimination case, as I recall.

Does this ring any bells for you?

It does. It was a very hotly contested case involving the Sparks Police Department. The issue was whether Mr. Gentry was being discriminated against on the basis of his race. I think it consumed about ten days. My recollection is that the jury deadlocked. We were ready to retry it, and the parties resolved the case the second time around and we didn't have to retry it. I'm always delighted when the parties resolve their disputes without having to try a case a second time.

Sure. Well into your term as chief judge, 9/11 occurred, the attack on the World Trade Center and the Pentagon and the aircraft over Pennsylvania in 2001. What impact did the terrorist attacks have on the court?

It had a major impact. I'll never forget, I was sitting in court in San Diego as a visiting judge when that occurred. I turned the television on that morning just before I went over to the courthouse and I saw this horrific incident. It was unbelievable. I went to the court and I talked with Judge Marilyn Huff, who was the chief judge in the Southern District of California at the time. We discussed whether we should close the courts.

Shortly after that discussion, I called the clerk of our court and had a conference call

with our judges. We decided that we should close our court for the day until we could fully understand what was happening nationally. Did it impact the courts? Was this threat an ongoing threat to the citizens and to members of the community?

Then I had to try to determine out how I could get back to Reno as quickly as possible. The flights had all been canceled, but I did have a rental car. I contacted the rental agency and they allowed me to drive the car to Reno without any additional charge.

I immediately drove to Reno and arrived about eleven o'clock at night. We were able to determine that there was no apparent security threat to our court so we opened court the next day.

But the long-term changes were fairly profound in terms of security. We had heightened security almost immediately. How people are screened coming into the courthouses changed radically. The screening of employees, the screening of judges changed dramatically. The security systems that were put in place to prevent people from being able to come down ramps into the courthouse all changed and additional security was provided.

Court security officers?

Yes, the CSOs, court security officers. And that, to this day, has really changed how we conduct our court-related business. Everyone is much more concerned about security issues. We've always been concerned about security, but we focused mainly on the potential problems with a disgruntled litigant not some external force that might target a courthouse.

Yes, I think so. It changed our entire society in that regard, I think.

It did. My recollection was that the judicial conference was holding a meeting in Washington, D.C. when this happened. The Chief Justice adjourned the session, and then there was a question of how they could safely exit the Supreme Court. Nobody knew what building might be the next target. It was a very frightening period in our nation.

Yes, it was. Yes, it was. As you mentioned, more often in the past, there have been concerns about individuals threatening judges and you've had that situation, which we've talked about in the past. But in 2002, I believe you tried someone who was accused of plotting the murder of a district judge, Rosalyn Silver. Do you recall that case?

Yes. I really can't talk about the merits of the case because I think there's an aspect of that that could still be on appeal, but that was a case in which Mr. Stewart was charged with having attempted to hire another to kill a federal district judge in Arizona. All the judges in Arizona recused and I received a call from the circuit to see if I would try that case, and I did. It lasted about eight days. He was convicted on those charges.

That was a very difficult case, and I know it was a difficult case for the jurors. There were many issues on whether the defendant would represent himself or be represented by counsel. He ultimately asked for legal representation but there were issues that I had to explore and decide on self-representation.

Of course. A very different kind of case occurred in 2003, and it probably wouldn't have even been in my notes if it didn't involve . . . 2003, there was a case involving a celebrity, a performer by the name of David Copperfield, and I believe he sued his insurance company, the Fireman's Fund for breach of contract.

That was an interesting case. That was a case in which David Copperfield sued the insurance company under his policy for what was referred to as lost property. He had entered into a contract to perform his magic show in Russia at several venues, the last of which was to be in Moscow. It was to be performed on a Sunday afternoon and the mayor of Moscow and a number of other dignitaries were going to be there.

The testimony showed that an organization, which was known as Ris LisS Corporation, which was reported to be linked to the Russian mafia, was involved in the contract with Copperfield. This organization decided they wouldn't make the last payment that Copperfield believed they owed him. So he indicated that the performance in Moscow wouldn't go on. They insisted that it would. Ultimately, Copperfield was given the money to perform the magic show.

The next morning when he was getting ready to leave, the Carnet papers required to move Copperfield's props and equipment out of the country disappeared, and it wasn't magic. These papers permitted Mr. Copperfield to transport more than four million dollars worth of equipment necessary for his illusions in and out of Russia without paying taxes or duties. Since Ris LisS had reluctantly paid him the last payment, they decided to hold his property in Russia until he repaid the money that had been paid for that last show.

Mr. Copperfield left the country and returned to the U.S. His equipment remained in Moscow in a warehouse. Finally, he paid back the money and the equipment was released. He then sued the insurance company on the grounds that the property was lost property.

Ultimately, the jury found against Copperfield on his claims and entered a

defense verdict. It was an intriguing tale of what happens in Russia.

Sounds interesting.

It was.

Lots of interesting issues there.

One thing we do find in our district is that there are a number of noteworthy people that end up in our court. I know Judge Foley had a case a number of years ago that involved Rodney Dangerfield. That was a case in which he apparently singed his eyes while he was in a steam room at one of the hotels. It got hotter than it should have. He felt the injury to his eyes would affect his ability to perform.

I've asked you about a lot of cases over the course of our interviews. Is there any particular case that I haven't asked you about that you would like to talk about?

I don't know if we've spoken about the water cases in Nevada, the Truckee River Irrigation District, the decrees on the Truckee River and the Carson Rivers. I don't know if we've talked about that.

No. Tell me about those.

One of the significant cases involved recoupment of waters that were allegedly over-diverted by the TruckeeCarson Irrigation District. Congress enacted legislation authorizing the government to move forward to try to recoup water that allegedly was over-diverted. The people with an interest in that, were the United States, the Pyramid Lake Paiute Tribe, the TruckeeCarson Irrigation District, which represented the ranchers in Fallon, and others who had some collateral

interest. The question was whether or not there were over-diversions, and if so, what was the amount of over-diversion of water to the TruckeeCarson Irrigation District to the detriment of the Pyramid Lake Paiute Indians.

Ultimately, I decided there had been an over diversion of apparently 200,000 acre-feet of water which should be restored to the tribe at Pyramid Lake. And, I set in place a structure for recoupment of that water. As I say, those issues are on appeal now.

The trial involved thousands of exhibits; it involved numerous parties, and I believe that we were in trial for maybe six or seven weeks. It felt longer. It was so protracted that my family actually gave me a large gavel, which is about twenty times the size of a regular gavel, so I could take it to court to keep order and keep the case moving along. The first day I appeared in court with that gavel, the attorneys were very humble and very responsive to all the concerns that I had about the speed at which we were moving. The gavel got their attention. I have proudly displayed it in my chambers on top of my stand-up desk, and if I ever have the need, I'll take it back into court again.

That's great. As a famous Nevada resident once said, Mark Twain, "In the West, whiskey's for drinking and water's for fighting."

That's right. I've heard that. I like that one.

Are there other cases that stand out in your mind? Thinking back over your career, it's been long, both as a practicing attorney and now on the state bench and on the federal bench. What advice would you give to a young person who is considering a career in the law?

I think it's a wonderful profession. I would encourage anyone who has an aptitude for

resolving disputes or an aptitude for trying to solve thorny issues to give the law every consideration. I was drawn to it because I wanted to be involved in public service in some way. I think a person who wants to become a lawyer has to be willing to expend the time that's going to be necessary to do an effective job. If you're in the public sector then the compensation will be in the rewards that come from serving the public and not always monetary compensation.

If you're a private practitioner, then, of course, the monetary compensation will be greater, but I don't think that should be a primary consideration for going into law. You have to enjoy the law. You have to enjoy resolving disputes. You have to enjoy representing people and being able to advocate a position. You have to be able to do so zealously, but with an overall concept of fairness. And you should not get so involved in the cause of your client that you don't understand that there are competing issues in every case and that you have to take an objective look at what you're doing.

I guess the piece of advice that I give everyone who is considering the field of law is to keep balance in your life. It's easy for attorneys to get so wrapped up in what they're doing that they forget about their family. They forget about being able to relax. The advice that I give to young attorneys who are being admitted to the federal bar is to keep that good balance between professional responsibilities and yet committing yourself totally to the family. I have had a basic rule all these years—hopefully, I've lived up to it—and that is if I ever had to make a choice between my family and my profession, my family would come first. I would resign from whatever I was doing. Fortunately, I've not had to make that choice because I, hopefully, have made some fairly decent decisions in

drawing that appropriate balance particularly with the support and help of my wonderful wife Mary Ann and our children Mark and Susan.

It has also helped that I have been blessed with a wonderful staff including my administrative assistants Lois Storke and Beverly Newell who worked with me so ably while I was district attorney and then on the state bench. And then Dorothy McRee and Candice Rowe while I have been on the federal bench. Candice continues to be invaluable to me in maintaining our chambers. She has made my job much easier and is a joy to work with. I have also appreciated the wonderful services of my long-time court reporter Kathy French and my courtroom deputies Paris Rich and Bette Stewart. And, I have been very fortunate to have been served so well by my career law clerk Emily Gust and by all of my law clerks, without whom it would have been very difficult to serve on the court. I am deeply indebted to every member of my staff, the clerks office, and the entire court family for their incredible contribution to our chambers and the administration of justice.

I would say that it's a demanding profession, but it's an incredibly rewarding profession. I think we need young people who believe in the law and believe in the need for people to have very competent, ethical, qualified people representing them. We need young people who believe in justice and want to be a part of this venerable profession.

One thing has been a little troubling to me over the years. I've noticed that our profession is not as respected, I think, now as it was when I first started the practice of law. You hear jokes about lawyers or you hear disparaging comments about lawyers or you see advertising that is not appropriate and it is troubling. I think lawyers have to be concerned not only about what they are doing

individually, but the impact of their conduct on the profession as a whole.

I would strongly urge those who are contemplating entering the profession to be ethical, be professional, and always remember that civility and fairness is the coin of the realm. In my book, the lawyer whose word is his or her bond will be successful. I guess that summarizes my thought on that anyway.

I think that's well said. I really do appreciate the time you've given me to chat over these few years to do this oral history. I really appreciate your candor and I've enjoyed it a great deal.

Yes, well, I've enjoyed it, too.

